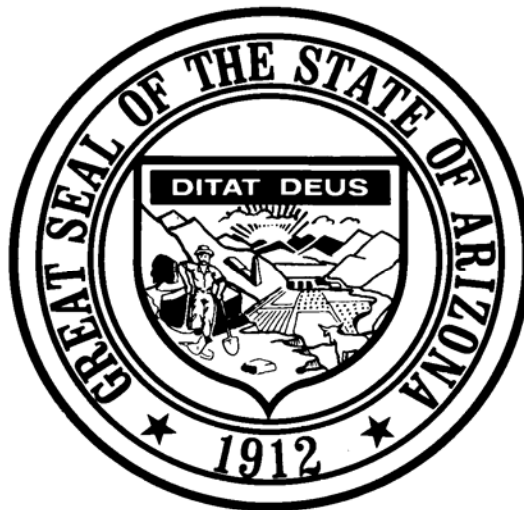


**ARIZONA DEPARTMENT OF HEALTH SERVICES  
OFFICE OF CHILD CARE LICENSING  
<http://www.azdhs.gov/als/childcare/index.htm>**

**ARIZONA ADMINISTRATIVE CODE,  
SUBSTANTIVE POLICIES,  
AND ARIZONA REVISED STATUTES  
FOR CHILD CARE FACILITIES**

**INTERPRETATION AND CLARIFICATION OF CHILD CARE LICENSING RULES**



**MISSION STATEMENT**

“To monitor the health, safety and well being of children in child care centers and child care group homes throughout Arizona by regulating, establishing and enforcing appropriate rules, and by providing technical assistance and training to caregivers, and by providing consumer education.”

**DEPARTMENT OF HEALTH SERVICES  
DIVISION OF LICENSING SERVICES  
OFFICE OF CHILD CARE LICENSING  
#SP-032-DLS-CCL**

**INTERPRETATION AND CLARIFICATION OF CHILD CARE LICENSING RULES  
IN 9 A.A.C. 5.**

*This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.*

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The purpose of this substantive policy statement is to provide the general public with clarification for many of the rules in 9 A.A.C. 5 in order to afford consistent interpretation, application, and enforcement of each rule clarified in this substantive policy statement.

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*Effective March 10, 2006  
Arizona Department of Health Services  
Division of Licensing Services  
Office of Child Care Licensing  
150 North 18th Avenue, Suite 400  
Phoenix, AZ 85007*

## TITLE 9. HEALTH SERVICES

### CHAPTER 5. DEPARTMENT OF HEALTH SERVICES CHILD CARE FACILITIES

*Chapter 5 consisting of Sections R9-5-101, R9-5-201 through R9-5-211, R9-5-301 through R9-5-308, R9-5-401 through R9-5-404, R9-5-501 through R9-5-222, R9-5-601 through R9-5-614 adopted effective December 12, 1986.*

*Former Chapter 5 consisting of Sections R9-5-110 through R9-5-113, R9-5-211 through R9-5-218, R9-5-311 through R9-5-313, R9-5-411 through R9-5-425 repealed effective December 12, 1986.*

*Heading of Chapter permanently changed from "Department of Health Services - Day Care Centers" to "Department of Health Services - Child Care Facilities" effective October 4, 1990 (Supp. 90-4).*

*Heading of Chapter changed by emergency action from "Department of Health Services - Day Care Centers" to "Department of Health Services - Child Care Facilities" effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3).*

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ARTICLE 1. GENERAL

**R9-5-101. Definitions**

In this Chapter, unless otherwise specified:

1. "Abuse" has the same meaning as in A.R.S. § 8-201.
2. "Accident" means an unexpected occurrence that:
  - a. Causes physical injury to a child,
  - b. Requires attention from a staff member, and
  - c. May or may not be an emergency.
3. "Accommodation school" has the same meaning as in A.R.S. § 15-101.
4. "Accredited" means approved by the:
  - a. New England Association of Schools and Colleges,
  - b. Middle States Association of Colleges and Secondary Schools,
  - c. North Central Association of Colleges and Schools,
  - d. Northwest Association of Schools and Colleges,
  - e. Southern Association of Colleges and Schools, or
  - f. Western Association of Schools and Colleges.
5. "Activity" means an action planned by a licensee and performed by a child while supervised by a staff member.
6. "Activity area" means a specific indoor or outdoor space or room of a licensed facility that is designated by a licensee for use by enrolled children for activities.
7. "Adaptive device" means equipment used to augment an individual's use of the individual's arms, legs, sight, hearing, or other physical part or function.
8. "Adult" means an individual who is at least 18 years of age.
9. "Age-appropriate" means consistent with a child's age and age-related stage of physical growth and mental development.
10. "Agency" means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
11. "Applicant" means an individual or business organization requesting one of the following:
  - a. An initial or renewal license, or
  - b. Approval of a change affecting a license under R9-5-206.
12. "Application" means the documents that an applicant is required to submit to the Department for licensure or approval of a request for a change affecting a license.
13. "Assistant teacher-caregiver" means a staff member who, for compensation, aids a teacher-caregiver in planning, developing, or conducting child care activities.
14. "Association or cooperative" means a group of individuals other than a corporation, limited liability company, partnership, joint venture, or public school who have established a governing board and bylaws to operate a facility.
15. "Beverage" means a liquid for drinking, including water.
16. "Business organization" means an entity such as an unincorporated association, a corporation, a limited liability company, a partnership, or a governmental entity.
17. "Calendar week" means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.
18. "C.C.P." means Certified Childcare Professional, a credential awarded by the National Child Care Association to an individual who has successfully completed a test of ability to work effectively with children.
19. "C.D.A." means Child Development Associate, a credential awarded by the Child Development Associate National Credentialing Program to an individual who has successfully completed a test of ability to work effectively with children.
20. "Change in ownership" means a transfer of controlling legal or controlling equitable interest and authority in a facility resulting from a sale or merger of a facility.
21. "Charter school" has the same meaning as in A.R.S. § 15-101.
22. "Child" means the same as in A.R.S. § 36-881.
23. "Child care" has the same meaning as in A.R.S. § 36-881.
24. "Child care experience" means an individual's documented work with children in:
  - a. a child care facility or a child care group home that is licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;
  - b. a public school, a charter school, a private school, or an accommodation school;
  - c. a public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12; or
  - d. One of the following professional fields:
    - i. Nursing,
    - ii. Social work,
    - iii. Psychology,
    - iv. Child development, or
    - v. A closely related field.
25. "Child care services" means the range of activities and programs provided by a licensee to a child, including personal care, supervision, education, guidance, and transportation.
26. "Child Protective Services" means the Child Protective Services Program of the Arizona Department of Economic Security.
27. "Child with special needs" means:

- a. A child with a health care provider's diagnosis and record of a physical or mental condition that substantially limits the child in providing self-care or performing age-appropriate manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning;
  - b. A child with a "developmental disability" as defined in A.R.S. § 36-551; or
  - c. A "child with a disability" as defined in A.R.S. § 15-761.
28. "Clean" means to remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping.
29. "Closely related field" means any educational instruction or occupational experience pertaining to the growth, development, physical or mental care, or education of children.
30. "Communicable disease" has the same meaning as in A.A.C. R9-6-101.
31. "Compensation" means money or other consideration, including goods, services, vouchers, time, or another benefit, that is received as payment.
32. "Controlling person" means a person who:
- a. Through ownership has the power to vote at least 10% of the outstanding voting securities.
  - b. If the applicant or licensee is a partnership, is the general partner or a limited partner who holds at least 10% of the voting rights of the partnership.
  - c. If the applicant or licensee is a corporation, an association or a limited liability company, is the president, the chief executive officer, the incorporator, an agent, or any person who owns or controls at least 10% of the voting securities.
  - d. Holds a beneficial interest in 10% or more of the liabilities of the applicant or the licensee.
33. "Corporal punishment" means any physical action that inflicts pain to the body of a child, or that may result in physical injury to a child.
34. "C.P.C." means Certified Professional in Childcare, a credential awarded by the National Early Care and Education Association to an individual who has successfully completed a test of ability to work effectively with children.
35. "CPR" means cardiopulmonary resuscitation.
36. "Credit hour" means an academic unit earned at an accredited college or university by attending a one-hour class session each calendar week during a semester or equivalent shorter course term or completing equivalent practical work as part of a course.
37. "Days" means calendar days, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
38. "Designated agent" means an individual who is:
- a. A controlling person;
  - b. A United States citizen or legal resident alien;
  - c. A resident of Arizona; and
  - d. Authorized by an applicant or licensee to receive communications, including service of process, from the Department and to file and sign documents for the applicant or licensee.
39. "Developmentally appropriate" means consistent with a child's physical, emotional, social, cultural, and cognitive development, based on the child's age and family background and the child's personality, learning style, and pattern and timing of growth.
40. "Discipline" means to correct a child's behavior that does not meet generally accepted levels of social behavior.
41. "Emergency" means a potentially life-threatening occurrence involving a child or staff member that requires an immediate response or medical treatment.
42. "Endanger" means to expose an individual to a situation where physical or mental injury to the individual may occur.
43. "Enrolled" means placed by a parent and accepted by a licensee for child care services.
44. "Evening and nighttime care" means child care services provided between the hours of 8:00 p.m. and 5:00 a.m.
45. "Facility" means "child care facility" as defined in A.R.S. § 36-881.
46. "Facility director" means an individual meeting the qualifications in R9-5-401(1) who is designated by a licensee as the individual responsible for the daily onsite operation of a facility.
47. "Facility premises" means property that is:
- a. Designated on an application for a license by the applicant, and
  - b. Licensed for child care services by the Department under A.R.S. Title 36, Chapter 7.1, Article 1 and these rules.
48. "Field trip" means an activity planned by a staff member for:
- a. Preschool children off facility premises, or
  - b. School-age children off facility premises or school campus.
49. "Final construction drawings" means facility plans that include the architectural, structural, mechanical, electrical, fire protection, plumbing, and technical specifications of the physical plant and the facility premises and that have been approved by local government for the construction or modification of a facility.
50. "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
51. "Food preparation" means processing food for human consumption by cooking or assembling the food, but does not include distributing prepackaged food or whole fruits or vegetables.
52. "Full-day care" means child care services provided for six or more hours per day between the hours of 5:00 a.m. and 8:00 p.m.
53. "Guidance" means the ongoing direction, counseling, teaching, or modeling of generally accepted social behavior through which a child learns to develop and maintain the self-control, self-reliance, and self-esteem necessary to assume responsibilities, make daily living decisions, and live according to generally accepted social behavior.
54. "Hazard" means a source of endangerment.



55. "Health care provider" means a physician; physician assistant; nurse; registered nurse practitioner; state board licensed, registered, or certified psychologist; or state board licensed, registered, or certified occupational, physical, or respiratory therapist.
56. "High school equivalency diploma" means:
- a. A document issued by the Arizona Department of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);
  - b. A document issued by another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or
  - c. A document issued by another country to an individual who has completed that country's equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or foreign consulates or embassies or other governmental entities.
57. "Hours of operation" means the specific time during a day for which a licensee is licensed to provide child care services.
58. "Illness" means physical manifestation or signs of sickness, such as pain, vomiting, rash, fever, discharge, or diarrhea.
59. "Infant" means:
- a. A child 12 months of age or younger, or
  - b. A child 18 months of age or younger who is not yet walking.
60. "Infant care" means child care services provided to an infant.
61. "Infestation" means the presence of lice, pinworms, scabies, or other parasites.
62. "Inspection" means:
- a. Onsite examination of a facility by the Department to determine compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and these rules;
  - b. Onsite review of facility records or reports by the Department; or
  - c. Onsite examination of a facility by a local governmental entity.
63. "Lesson plan" means a written description of the activities scheduled in each activity area for a day.
64. "License" means the written authorization issued by the Department to operate a facility in Arizona.
65. "Licensed applicator" has the same meaning as in A.R.S. § 32-2301.
66. "Licensed capacity" means the maximum number of children for whom a licensee is authorized by the Department to provide child care services in a facility or a part of a facility at any given time.
67. "Licensee" means a person, as defined by A.R.S. § 36-881, to whom the Department has issued a license to operate a facility in Arizona.
68. "Local" means under the jurisdiction of a city or county in Arizona.
69. "Mat" means a foam pad that has a waterproof cover and is of sufficient size and thickness to accommodate the height, width, and weight of a reclining child's body.
70. "Material safety data sheet" means the information provided by a manufacturer describing chemical qualities, hazards, safety precautions, and emergency procedures to be followed in case of a spill, fire, or other emergency.
71. "Medication" means a substance prescribed by a physician, physician assistant, or registered nurse practitioner or available without a prescription for the treatment or prevention of illness or infestation.
72. "Menu" means:
- a. A written description of the food that a facility provides and serves as a meal or snack, or
  - b. The combination of food that a facility provides and serves as a meal or snack.
73. "Modification" means an alteration or addition to the physical plant of a licensed facility that may require a permit issued by local government.
74. "Motor vehicle" has the same meaning as in A.R.S. § 28-101.
75. "N.A.C." means the National Administrator Credential, a credential issued by the National Child Care Association to an individual who has successfully completed a test of ability to work effectively with children as a director of a child care facility.
76. "Naptime" means any time during hours of operation, other than evening and nighttime hours, that is designated by a licensee for the rest or sleep of children.
77. "Neglect" has the same meaning as in A.R.S. § 8-201.
78. "Nurse" means an individual who is:
- a. Licensed under A.R.S. Title 32, Chapter 15 as a practical nurse or as a registered, graduate, or professional nurse; or
  - b. Licensed as a practical nurse or a registered nurse under the law of another state.
79. "One-year-old" means a child who is at least 12 months of age but not yet two years of age.
80. "One-year-old child care" means child care services provided to a one-year-old.
81. "Parent" means:
- a. A natural or adoptive mother or father,
  - b. A legal guardian appointed by a court of competent jurisdiction, or
  - c. A "custodian" as defined in A.R.S. § 8-201.
82. "Part-day care" means child care services provided for fewer than six hours per day between the hours of 5:00 a.m. and 8:00 p.m.
83. "Perishable food" means food that becomes unfit for human consumption if not stored to prevent spoilage.
84. "Person" means:
- a. In Articles 2 through 6, the same as in A.R.S. § 36-881; and
  - b. In Articles 7 through 10, an individual or a business organization.

85. "Personal reference" means an adult who is familiar with a director's or staff member's character due to observations made as a friend or acquaintance.
86. "Pesticide" has the same meaning as in A.R.S. § 32-2301.
87. "Pesticide label" means the written, printed, or graphic matter approved by the United States Environmental Protection Agency on, or attached to, a pesticide container.
88. "Physical plant" means a building that houses a facility, or licensed areas within a building that houses a facility, including the architectural, structural, mechanical, electrical, plumbing, and fire protection elements of the building.
89. "Physician" means an individual licensed as a doctor of:
  - a. Allopathic medicine under A.R.S. Title 32, Chapter 13;
  - b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
  - c. Osteopathic medicine under A.R.S. Title 32, Chapter 17;
  - d. Homeopathic medicine under A.R.S. Title 32, Chapter 29; or
  - e. Allopathic, naturopathic, osteopathic, or homeopathic medicine under the law of another state.
90. "Physician assistant" means:
  - a. An individual who is licensed under A.R.S. Title 32, Chapter 25; or
  - b. An individual who is licensed as a physician assistant under the law of another state.
91. "Preparing food" means processing food for human consumption by cooking or assembling the food, but does not include distributing prepackaged food or whole fruits or vegetables.
92. "Private pool" has the same meaning as "private residential swimming pool" in R9-8-801.
93. "Private school" has the same meaning as in A.R.S. § 15-101.
94. "Professional reference" means an adult who is familiar with a director's or staff member's work abilities due to observations made as a supervisor or leader in a business, school, church, or other organizational setting.
95. "Program" means a variety of activities organized and conducted by a staff member.
96. "Public pool" has the same meaning as "public swimming pool" in R9-8-801.
97. "Public school" means a government-operated educational institution established for the purpose of offering instruction to pupils in programs for preschool children, kindergarten programs, or any combination of grades one through 12.
98. "Registered nurse practitioner" means:
  - a. An individual who:
    - i. Is licensed as a registered, graduate, or professional nurse under A.R.S. Title 32, Chapter 15;
    - ii. Is certified by the Arizona State Board of Nursing through its rules for extended nursing practice; and
    - iii. Has completed a nurse practitioner education program approved or recognized by the Arizona State Board of Nursing; or
  - b. An individual who is licensed as a registered nurse practitioner under the law of another state.
99. "Regular basis" means at recurring, fixed, or uniform intervals.
100. "Resident" means:
  - a. In reference to residency in a child care facility, an individual who does not work in the child care facility, but who uses the child care facility as the individual's principal place of habitation for 30 days or more during the calendar year; and
  - b. In reference to residency in Arizona, the same as in A.R.S. § 43-104.
101. "Sanitize" means to use heat, chemical agents, or germicidal solutions to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
102. "School-age child" means a child who:
  - a. Meets one of the following:
    - i. Is five years old on or before January 1 of the current school year, or
    - ii. Is five years old on or before January 1 of the most recent school year; and
  - b. Meets one of the following:
    - i. Attends kindergarten or a higher level program in a public, charter, accommodation, or private school during the current school year;
    - ii. Attended kindergarten or a higher level program in a public, charter, accommodation, or private school during the most recent school year;
    - iii. Is home-schooled at a kindergarten or higher level during the current school year; or
    - iv. Was home-schooled at a kindergarten or higher level during the most recent school year.
103. "School-age child care" means child care services provided to a school-age child.
104. "School campus" means the contiguous grounds of a public, charter, accommodation, or private school, including the buildings, structures, and outdoor areas available for use by children attending the school.
105. "School governing board" has the same meaning as "governing board" in A.R.S. § 15-101.
106. "Semi-public pool" has the same meaning as "semipublic swimming pool" in R9-8-801.
107. "Service classification" means one of the following:
  - a. Full-day care,
  - b. Part-day care,
  - c. Evening and nighttime care,
  - d. Infant care,
  - e. One-year-old child care, or
  - f. School-age child care.
108. "Signed" means affixed with an individual's signature or with a symbol representing an individual's signature if the individual is unable to write the individual's name.

109. "Space utilization" means the designated use of an area within a facility for specific child care services or activities.
110. "Staff" or "staff member" or "child care personnel" means an individual who works in a facility, regardless of whether compensation is received by the individual.
111. "STRIVE" means Family, Career, and Community Leaders of America, formerly known as Students Together Rising in Vocational Education, a career and technical student organization authorized by the Arizona Department of Education.
112. "Student-aide" means an individual less than 16 years of age who is enrolled in an educational, curriculum-based course of study and who, without being compensated by a licensee, is present at a facility to receive instruction from and supervision by child care personnel in the provision of child care services.
113. "Substantial compliance" means that the nature or number of violations revealed by any type of inspection or investigation of an applicant for licensure or a licensed child care facility does not pose a direct risk to the life, health, or safety of children.
114. "Supervision" means:
  - a. The physical presence of a facility director or staff member who has responsibility for and is within sight and sound of an enrolled child, or
  - b. The physical presence of a facility director or teacher-caregiver who is providing direction to and is within sight and sound of a staff member or student-aide.
115. "Swimming pool" has the same meaning as in R9-8-801.
116. "Teacher-caregiver" means a staff member responsible for developing, planning, and conducting child care activities.
117. "Training" means child care-related conferences, seminars, lectures, workshops, classes, courses, or instruction required by the Department of a licensee or staff member.
118. "Volunteer" means a staff member who works in a facility without compensation.

#### Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Amended by adding a new paragraph (16) and renumbering accordingly effective July 7, 1988 (Supp. 88-3). Amended as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency amendments readopted and amended effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency amendments readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency expired. Emergency amendments readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency amendments readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency amendments permanently adopted with changes effective October 4, 1990 (Supp. 90-4). Amended effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Amended by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1). Amended by final rulemaking at 13 A.A.R. 3492, effective December 1, 2007 (Supp. 07-4).

### **Guidelines for Compliance: (R9-5-101 - Definitions)**

#### ***R9-5-101 (51) – Food Preparation***

- *Food preparation does not include:  
Adding water to powdered milk;  
Adding water to formula; and  
Warming food.*

**NOTE:** *Each county health department has a different requirement for the warming of food.*

#### ***R9-5-101 (69) – Mat***

- *According to the definition, a "mat" is required to be waterproof. An all-in-one product that consists of a quilt, pillow, and blanket that can be rolled up and stored in a small box may not be used as a "mat" because it is not waterproof. The all-in-one product may be used on a mat to meet the sheet and blanket requirements of **R9-5-511 (A) (1-3)**.*

#### ***R9-5-101 (101) – Sanitize***

- *A product other than bleach may be used to sanitize. The product must sanitize immediately upon use.*
- NOTE:** *Immediately is defined as, "without delay or hesitation, instantaneous."*

#### ***R9-5-101 (102) – School-age Child***

- *According to **A.R.S. §15-821 (C)**, a school governing board may admit a child to Kindergarten, who has not reached the required age, if the school governing board deems it*

*is in the best interest of the child and the child turns five years old by January 1st of the current school year. Such a child may attend a licensed after school program.*

**NOTE:** *If a four-year-old child is present in a school-age program, the ratio for four year olds needs to be followed.*

**R9-5-101 (112) – Student-aide**

- *A 15-year-old is required to be enrolled in an education course of study to be present at a facility and to be considered a student-aide.*
- *A 15-year-old from Juvenile Probation is not permitted to complete his/her community service in a child care facility as a volunteer.*
- *The only written documentation requirement for a student-aide's file is **R9-5-401 (4)**.*
- *A student-aide may not be counted in the staff-to-children ratios of a facility.*
- *A qualified staff member must supervise a student-aide at all times.*
- *A fingerprint clearance card is not required for an individual younger than 18 years of age.*

**R9-5-102. Individuals to Act for Applicant or Licensee Regarding Document, Fingerprinting, and Department-Provided Training Requirements**

When an applicant or licensee is required by this Chapter to provide information on or sign documents, possess a fingerprint clearance card, or complete Department-provided training, the following shall satisfy the requirement on behalf of the applicant or licensee:

1. If the applicant or licensee is an individual, the individual;
2. If the applicant or licensee is a corporation, an officer of the corporation;
3. If the applicant or licensee is a partnership, two of the partners;
4. If the applicant or licensee is a limited liability company, a manager or, if the limited liability company does not have a manager, a member of the limited liability company;
5. If the applicant or licensee is an association or cooperative, two members of the governing board of the association or cooperative;
6. If the applicant or licensee is a joint venture, two of the individuals signing the joint venture agreement;
7. If the applicant or licensee is a public school, an individual designated in writing as signatory for the public school by the school governing board or school district superintendent;
8. If the applicant or licensee is a charter school, the person approved to operate the charter school by the district governing board, the Arizona Board of Education, or the Arizona Board for Charter Schools;
9. If the applicant or licensee is a governmental agency, the individual in the senior leadership position with the agency or an individual designated in writing by that individual; and
10. If the applicant or licensee is a business organization type other than those described in subsections (2) through (9), two individuals who are members of the business organization.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Amended by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**ARTICLE 2. FACILITY LICENSURE**

**R9-5-201. Application for a License**

A. An applicant for a license shall:

1. Be at least 18 years of age;
2. If an individual, be a U.S. citizen or legal resident alien and a resident of Arizona;
3. If a corporation, association, or limited liability company, be a domestic entity or a foreign entity qualified to do business in Arizona;
4. If a partnership, have at least one partner who is a U.S. citizen or legal resident alien and a resident of Arizona;
5. Submit to the Department an application that includes:
  - a. A notarized application form signed by the applicant stating:
    - i. The applicant's name;
    - ii. The facility's name, street address, mailing address, and telephone number;
    - iii. The applicant's type of business organization;
    - iv. The name and business or residential address of each controlling person;
    - v. That no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
    - vi. That no controlling person has had a certificate to operate a child care group home or a license to operate a child care facility revoked in this state or another state for reasons that relate to endangerment of the health and safety of children;
    - vii. Whether the applicant agrees to allow the Department to submit supplemental requests for information; and

- viii. That the applicant has read and will comply with these rules and declares that the information provided in the application is accurate and complete;
- b. If the applicant is a business organization, an Attachment to Application including the following organizational information about the applicant:
  - i. The address of the business organization;
  - ii. The name, title, and address of each officer and board member or trustee; and
  - iii. A copy of the business organization's articles of incorporation, articles of organization, or partnership or joint venture documents, if applicable;
- c. A copy of the applicant's valid class one or class two fingerprint clearance card issued according to A.R.S. § 41-1758.03;
- d. A Criminal History Affidavit Class I or Class II completed by the applicant and including the information required by A.R.S. § 36-883.02;
- e. A certificate issued by the Department showing that the applicant has completed at least four hours of Department-provided training that included the Department's role in licensing and regulating child care facilities under A.R.S. Title 36, Chapter 7.1, Article 1 and these rules;
- f. If the applicant is an individual, a copy of one of the following for the applicant:
  - i. A U.S. passport,
  - ii. A birth certificate,
  - iii. Naturalization documents, or
  - iv. Documentation of legal resident alien status;
- g. If the applicant is a corporation or a limited liability company, a certificate of good standing issued to the applicant by the Arizona Corporation Commission and dated within six months before the date of application;
- h. If the applicant is a partnership or an association, a copy of one of the following for one partner or association member of the applicant:
  - i. A U.S. passport,
  - ii. A birth certificate,
  - iii. Naturalization documents, or
  - iv. Documentation of legal resident alien status;
- i. The following information about the applicant's designated agent:
  - i. Name;
  - ii. Residential and business addresses;
  - iii. Residential and business telephone numbers; and
  - iv. Residential and business fax numbers, if any;
- j. A copy of one of the following for the applicant's designated agent:
  - i. A U.S. passport,
  - ii. A birth certificate,
  - iii. Naturalization documents, or
  - iv. Documentation of legal resident alien status;
- k. The documents required by R9-5-607;
- l. An Applicant, Staff, and Resident Report Form, including the applicant's name and address; a statement that the information on the form is accurate and complete; the dated signature of the applicant; and the following information about the applicant, each staff member, and each resident:
  - i. Name;
  - ii. Social security number or identification number issued by the U.S. Immigration and Naturalization Service;
  - iii. Birth date;
  - iv. Hire date, if applicable;
  - v. Job title, if a staff member, or relationship to the applicant or director, if a resident;
  - vi. Date of high school diploma or high school equivalency diploma, if applicable; and
  - vii. Information demonstrating each individual's compliance with A.R.S. § 36-883.02;
- m. An Agricultural Land Notification Form, including:
  - i. The facility's name and address;
  - ii. Whether the facility is located within one-fourth mile of agricultural land; and
  - iii. If the facility is located within one-fourth mile of agricultural land, the names and addresses of the owners or lessees of all agricultural land located within one-fourth mile of the facility;
- n. If the facility is located within one-fourth mile of agricultural land, and a child care facility has not previously been licensed at the same location, a copy of an agreement complying with A.R.S. § 36-882(D) for each parcel of agricultural land affected;
- o. A Director Qualifications Form completed by the individual that the applicant intends to have serve as facility director, including:
  - i. The name of the individual;
  - ii. The facility's name, address, and telephone number;
  - iii. A statement that the individual is at least 21 years of age, will accept the primary responsibility for the daily administration and operation of the facility, and possesses the minimum qualifications required by R9-5-401;
  - iv. An indication of the individual's credentials or academic experience complying with R9-5-401;

- v. A list of the individual's qualifying child care experience, including beginning and ending dates; positions held; each facility's name, address, and telephone number; a description of the experience at each facility; and the number of hours per week worked at each facility;
  - vi. A copy of the individual's diploma or transcript from each high school, college, university, or other educational facility attended by the individual, showing the name and location of the educational facility; the course of study pursued at the educational facility; the date of any diploma or degree attained at the educational facility; and the number of credit hours completed or the diploma or degree attained at the educational facility;
  - vii. A copy of the certificate of attendance from each child-care workshop attended by the individual;
  - viii. A statement that the individual has provided the licensee with the names, addresses, and telephone numbers of two professional references and two personal references and with at least one written professional reference and one written personal reference;
  - ix. A statement that the information in the Director Qualifications Form is accurate and complete; and
  - x. The signature of the individual; and
  - p. The fee required by A.R.S. § 36-882.
- B. The Department requires a separate license and a separate application for:
- 1. Each facility owned by the same person at a different location, and
  - 2. Each facility owned by a different person at the same location.
- C. The Department does not require a separate application and license for a structure that is:
- 1. Located so that the structure and the facility:
    - a. Share the same street address, or
    - b. Can be enclosed by a single unbroken boundary line that does not encompass property owned or leased by another;
  - 2. Under the same ownership as the facility; and
  - 3. Intended to be used as a part of the facility.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3).

**R9-5-202. Time-frames**

- A. The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Article is listed in Table 1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Article is listed in Table 1 and begins on the date that the Department receives an application.
- 1. The Department shall send a notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
    - a. A notice of deficiencies shall list each deficiency and the items needed to complete the application.
    - b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is issued until the date that the Department receives all of the missing items from the applicant.
    - c. If an applicant for an initial license, a license renewal, or an approval of a change affecting a license fails to submit to the Department all of the items listed in the notice of deficiencies within 180 days after the date that the Department sent the notice of deficiencies, the Department shall consider the application withdrawn.
  - 2. If the Department issues a license or other approval to the applicant during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072 is listed in Table 1 and begins on the date of the notice of administrative completeness.
- 1. As part of the substantive review for an initial license application or a license renewal application, the Department shall conduct an inspection that may require more than one visit to the facility.
  - 2. As part of the substantive review for a request for approval of a change affecting a license that requires a change in the use of physical space at the facility, the Department shall conduct an inspection that may require more than one visit to the facility.
  - 3. The Department shall send a license or a written notice of approval or denial of a license or other request for approval to an applicant within the substantive review time-frame.
  - 4. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the Department and the applicant have agreed in writing to allow the Department to submit supplemental requests for information.
    - a. If the Department determines that an applicant or a facility is not in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and these rules, the Department shall send a comprehensive written request for additional information that includes a written statement of deficiencies stating each statute and rule upon which noncompliance is based.
    - b. An applicant shall submit to the Department all of the information requested in the comprehensive written request for additional information and written documentation of the corrections required in the statement of deficiencies, if applicable:
      - i. Within 120 days after the date of the comprehensive written request for additional information, if applying for an initial license or for approval of a change affecting a license; or
      - ii. Within 10 days after the date of the comprehensive written request for additional information, if applying for a license renewal.

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- c. The substantive review time-frame and the overall time-frame are suspended from the date that the Department issues a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested, including documentation of corrections required in a statement of deficiencies, if applicable.
- d. If an applicant fails to submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including documentation of corrections required in a statement of deficiencies, if applicable, within the time prescribed in subsection (C)(4)(b), the Department shall deny the application.
5. The Department shall issue a license or approval if the Department determines that the applicant and facility are in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and these rules, and the applicant submits documentation of corrections that is acceptable to the Department for any deficiencies.
6. If the Department determines that a license or approval is to be denied, the Department shall send to the applicant a written notice of denial complying with A.R.S. § 36-888 and stating the reasons for denial and all other information required by A.R.S. §§ 36-888 and 41-1076.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3).

**Table 1. Time-frames (in days)**

Type of Approval	Statutory Authority	Overall Time-Frame	Administrative Completeness Review Time-Frame	Substantive Review Time-Frame
Initial License under R9-5-201	A.R.S. § 36-882	120	30	90
License Renewal under R9-5-205	A.R.S. § 36-882	150	30	120
Approval of Change Affecting License under R9-5-206	A.R.S. §§ 36-882, 36-883	75	30	45

**Historical Note**

New Table made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3).

**R9-5-203. Fingerprinting Requirements**

- A. A licensee shall ensure that each staff member and each adult resident at a facility:
  1. Possesses a valid class one or class two fingerprint clearance card issued under A.R.S. § 41-1758.03; or
  2. Submits to the licensee, within seven working days after becoming a staff member or adult resident, a copy of a fingerprint clearance card application showing that the application was submitted to the fingerprint division of the Department of Public Safety under A.R.S. § 41-1758.02.
- B. If a staff member or adult resident possesses a class one or class two fingerprint clearance card that was issued before the staff member or adult resident became a staff member or adult resident at the facility, the licensee shall contact the Department of Public Safety within seven working days after the individual becomes a staff member or adult resident to determine whether the class one or class two fingerprint clearance card is valid. The licensee shall make a record of this determination, including the name of the staff member or adult resident, the date of the contact with the Department of Public Safety, and whether the class one or class two fingerprint clearance card is valid.
- C. A licensee shall not allow an individual to be a staff member or adult resident if the individual has been denied a class two fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1 and has not received an interim approval under A.R.S. § 41-619.55(H).
- D. A licensee shall not allow an individual to be a staff member or adult resident if the individual receives an interim approval under A.R.S. § 41-619.55(H) but is then denied a good cause exception under A.R.S. § 41-619.55 and a class two fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1.
- E. A licensee shall ensure that each staff member and adult resident submits to the licensee an original of the form required in A.R.S. § 36-883.02(C). A form completed while a staff member or adult resident was a staff member or adult resident at another facility does not satisfy this subsection.
- F. A licensee shall maintain documentation of compliance with this Section in each staff member's or adult resident's file throughout the time the individual is a staff member or adult resident and for 12 months after the individual ceases to be a staff member or adult resident.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3).

**Guidelines for Compliance (R9-5-203 - Fingerprinting Requirements)**

**R9-5-203 (A) (1) & (2)**

- *A parent is exempt from the fingerprinting requirements if the parent participates in activities with the parent's child in the presence of child care personnel. If a parent participates in activities with a child other than the parent's child, the parent is considered a staff member and must meet the fingerprinting requirements.*

**A.R.S. § 36-883.02 (B)**

- *A staff member must apply for a new fingerprint clearance card before the expiration date of the staff member's current fingerprint clearance card. A dated copy of the application must be kept in the staff member's file to document when the fingerprint clearance card was mailed to DPS. A new criminal history affidavit must also be completed and placed in the staff member's file.*

**R9-5-204. Child Care Service Classifications**

- A. The Department licenses child care facilities using the following service classifications:
  1. Full-day care,
  2. Part-day care,
  3. Evening and nighttime care,
  4. Infant care,
  5. One-year-old child care, and
  6. School-age child care.
- B. The Department shall designate on a facility's license each service classification that the facility is licensed to provide.
- C. A licensee shall not provide child care services in a service classification for which the licensee is not licensed.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Former Section R9-5-204 repealed; new Section R9-5-204 renumbered from R9-5-205 and amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3).

**R9-5-205. License Renewal**

- A. At least 45 days before the expiration date of a current license, an applicant for renewal of a license shall submit to the Department an application including:
  1. A notarized application form signed by the applicant that includes:
    - a. The applicant's name;
    - b. The facility's name, street address, mailing address, and telephone number;
    - c. The applicant's type of business organization; and
    - d. A statement that the applicant has read and will comply with these rules and declares that the information provided in the application is accurate and complete;
  2. An Attachment to Application including any changes to the information previously submitted as prescribed in R9-5-201(A)(5); and
  3. The fee required by A.R.S. § 36-882.
- B. An applicant that submits the items required by subsection (A) later than 45 days before the expiration date of the current license shall pay to the Department the late filing fee required by A.R.S. § 36-882.
- C. If an applicant submits the items required by subsection (A) and the fee required by subsection (B), if applicable, before the expiration date of the current license, the current license does not expire until the date specified in A.R.S. § 41-1092.11(A).

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Former Section R9-5-205 renumbered to R9-5-204; new Section R9-5-205 renumbered from R9-5-206 and amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3).

**Guidelines for Compliance (R9-5-205 - License Renewal)**

**R9-5-205 (A) (2)**

- *At renewal, any change to the information required in R9-5-201 (A) (5), such as a change in legal resident alien status for an individual applicant or a change of an applicant's designated agent, must be submitted to the Department.*



**R9-5-205 (B)**

- *An applicant for license renewal must have a current fingerprint clearance card or have applied for a new fingerprint clearance card before the fingerprint clearance card's expiration. The Department will not assess a late fee if the applicant has applied for a new fingerprint clearance card before the fingerprint clearance card's expiration and provides a copy of the dated fingerprint clearance card application. The Department will not issue a renewal license to the applicant until the Department receives a current copy of the clearance card.*

**R9-5-206. Changes Affecting a License**

- A. At least 30 days before the date of a change in a facility's name, a licensee shall send the Department written notice of the name change. Within 30 days after the date of receipt of the notice, the Department shall issue an amended license that incorporates the name change but retains the expiration date of the current license.
- B. At least 30 days before the date of an intended change in a facility's service classification, space utilization, or licensed capacity, a licensee shall submit a written request for approval of the change to the Department. The written request shall include:
  1. The licensee's name;
  2. The facility's name, street address, mailing address, and telephone number;
  3. The name, telephone number, and fax number of a point of contact for the request;
  4. The facility's license number;
  5. The type of change intended:
    - a. Service classification,
    - b. Space utilization, or
    - c. Licensed capacity;
  6. A narrative description of the intended change; and
  7. The following additional information, as applicable:
    - a. If the intended change affects individual rooms, the following information about each affected room:
      - i. Room name or number,
      - ii. Square footage,
      - iii. Operating hours,
      - iv. Ages of the children to receive care in the room,
      - v. Maximum number of children to receive care in the room, and
      - vi. Whether the room has a diaper changing area;
    - b. If the intended change is to increase licensed capacity, the square footage of the outdoor activity area; and
    - c. If the intended change includes a modification to a licensed facility, the following, as applicable:
      - i. If the facility is not located in a public school, a set of final construction drawings, in compliance with R9-5-607(B);
      - ii. If the facility is located in a public school and provides child care for children younger than school-age children, a set of final construction drawings or a school map, in compliance with R9-5-607(C);
      - iii. If the facility is located in a public school and provides child care only for school-age children, two sets of final construction drawings or two school maps, in compliance with R9-5-607(D); and
      - iv. If the facility is a factory-built building, the documents required by R9-5-607(E).
- C. The Department shall review a request submitted under subsection (B) according to R9-5-202. If the facility will be in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and these rules with the intended change, the Department shall send the licensee an amended license that incorporates the change but retains the expiration date of the current license.
- D. A licensee shall not implement any change described under subsection (B) until the Department issues an amended license.
- E. At least 30 days before the date of a change in the ownership of a facility, a licensee shall send the Department written notice of the change. A new owner shall obtain a new license as prescribed in R9-5-201 before the new owner begins operating the facility.
- F. A licensee changing a facility's location shall apply for a new license as prescribed in R9-5-201.
- G. Within 30 days after the election of a new officer to the business organization, the election of a new director to the board of directors for the business organization, or a change in a controlling person, a licensee shall send the Department written notice of the change. The written notice shall include:
  1. The name of the licensee;
  2. A description of the change made;
  3. The following information about each controlling person:
    - a. Name, and
    - b. Business or residential address;
  4. A statement that no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
  5. A statement that no controlling person has had a certificate to operate a child care group home or a license to operate a child care facility revoked in this state or another state for reasons that relate to endangerment of the health and safety of children;
  6. A statement that the information provided in the written notice is accurate and complete; and
  7. The notarized signature of the licensee.
- H. Within 30 days after changing its designated agent, a licensee shall send the Department written notice of the change, to include:

1. The name of the new designated agent;
2. The residential and business addresses of the new designated agent; and
3. A copy of one of the following for the new designated agent:
  - a. A U.S. passport,
  - b. A birth certificate,
  - c. Naturalization documents, or
  - d. Documentation of legal resident alien status.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Former Section R9-5-206 renumbered to R9-5-205; new Section R9-5-206 renumbered from R9-5-207 and amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3).

**R9-5-207. Change in Director**

- A. Except as provided in subsection (B), within 10 days before changing a facility director, a licensee shall send the Department written notice of the change.
- B. If a licensee is not aware of a change in facility director 10 days before the effective date of the change, the licensee shall send the Department written notice within 48 hours after becoming aware of the change.
- C. The written notice shall include a Director Qualifications Form completed as required by R9-5-201(A)(5)(o).

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Former Section R9-5-207 renumbered to R9-5-206; new Section R9-5-207 made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3).

**R9-5-208. Inspections; Investigations**

- A. The Department shall inspect each facility before issuing an initial license or a renewal license and as often as necessary to determine compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and these rules. A licensee shall allow access to all areas of the facility affecting the health, safety, or welfare of an enrolled child or to which an enrolled child has access during hours of operation.
- B. If the Department receives written or verbal information alleging a violation of A.R.S. Title 36, Chapter 7.1, Article 1 or these rules, the Department shall conduct an investigation. A licensee shall permit the Department to interview staff members, residents, and enrolled children as part of an investigation.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3).

**R9-5-209. Denial, Revocation, or Suspension of License**

- A. The Department may deny, revoke, or suspend a license to operate a facility if an applicant or licensee:
  1. Provides false or misleading information to the Department;
  2. Has been denied a certificate or license to operate a child care home or a certificate or license to operate a child care facility in any state, unless the denial was based on the applicant's failure to complete the certification or licensing process according to a required time-frame;
  3. Has had a certificate or license to operate a child care home or a certificate or license to operate a child care facility revoked or suspended in any state;
  4. Has been denied a fingerprint clearance card or has had a fingerprint clearance card revoked under A.R.S. Title 41, Chapter 12, Article 3.1;
  5. Fails to substantially comply with any provision in A.R.S. Title 36, Chapter 7.1, Article 1 or these rules; or
  6. Substantially complies with A.R.S. Title 36, Chapter 7.1, Article 1 and these rules, but refuses to carry out a plan acceptable to the Department to eliminate any deficiencies.
- B. In determining whether to deny, suspend, or revoke a license, the Department shall consider the threat to the health and safety of children in a facility based on such factors as:
  1. Repeated violations of statutes or rules,
  2. A pattern of non-compliance,
  3. The type of violation,
  4. The severity of each violation, and
  5. The number of violations.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3).

**R9-5-210. Repealed**

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended subsection (A) effective July 7, 1988 (Supp. 88-3). Repealed effective October 17, 1997 (Supp. 97-4).

**R9-5-211. Repealed**

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Repealed effective October 17, 1997 (Supp. 97-4).

**ARTICLE 3. FACILITY ADMINISTRATION**

**R9-5-301. General Licensee Responsibilities**

- A. A licensee shall designate a facility director who acts on behalf of the licensee and is responsible for the daily onsite operation of a facility.
- B. A licensee shall ensure that:
  - 1. A facility director designates in writing, an individual to act on behalf of the facility director when the facility director is not present in the facility;
  - 2. The individual designated in subsection (B)(1):
    - a. Has access to all records necessary for performance of the facility director's duties,
    - b. Is 21 years of age or older, and
    - c. Provides documentation of any of the following:
      - i. High school or high school equivalency diploma and six credit hours or more in early childhood, child development, or closely related field from an accredited college or university, or 30 actual hours of instruction, provided in conferences, seminars, lectures, or workshops in the areas of early childhood, child development, or closely related field, and 12 months or more of child care experience;
      - ii. N.A.C., C.D.A., C.C.P., or C.P.C. credential and at least 12 months of child care experience;
      - iii. A minimum of 24 credit hours from an accredited college or university, including at least six credit hours of course work in the areas of early childhood, child development, or closely related field, and 12 months of child care experience;
      - iv. Associate degree from an accredited college or university in the areas of early childhood, child development, or closely related field, and six months of child care experience; or
      - v. Bachelor degree from an accredited college or university in the areas of early childhood, child development, or closely related field, and 3 months of child care experience.
  - 3. A facility director supervises or assigns a teacher-caregiver to supervise each staff member that does not meet the qualifications of R9-5-401(2) and each student-aide, and
  - 4. A facility director prepares a dated attendance record for each day and ensures that each staff member records on the attendance record the time of each arrival and departure of the staff member.
- C. A licensee shall develop and implement written facility policies and procedures required for the daily onsite operation of the facility as prescribed in A.R.S. § 36-881 et seq. and these rules.
- D. A licensee shall notify a parent of the following:
  - 1. That the parent:
    - a. Has access to all areas of a facility where child care services are provided during hours of operation, and
    - b. Is permitted to participate in any child care activity that the parent's child is participating in; and
  - 2. Of the procedures for notifying a parent at least 48 hours before a pesticide is applied on a facility's premises.
- E. A licensee shall ensure that the following individuals are allowed immediate access to facility premises during hours of operation:
  - 1. A parent or an individual designated in writing by the parent; or
  - 2. A representative of:
    - a. The Department,
    - b. Local health department,
    - c. Child Protective Services, or
    - d. Local fire department or State Fire Marshal.
- F. A licensee shall, with the exception of individuals listed in subsection (E), ensure that a staff member accompany and monitor any individual that is not a staff member, who is on facility premises to provide repair, maintenance, supplemental education, or other services where children are present.
- G. A licensee shall ensure that each staff member and individual who is a resident at the facility submits one of the following documents provided by a health care provider as evidence of current freedom from pulmonary tuberculosis:
  - 1. A report of a negative Mantoux skin test administered to a resident at the facility or to a staff member no later than 12 hours after the starting date of employment; or
  - 2. A physician's written statement that the staff member or the individual who is a resident in the facility is currently free from tuberculosis.
- H. If an enrolled child has an accident, injury, or emergency that requires medical treatment by a health care provider while attending a facility, the licensee shall ensure that a staff member:
  - 1. Notifies the child's parent immediately after the accident, injury, or emergency;
  - 2. Documents the date, time, and location of the child's accident, injury, or emergency, the method used to notify the parent, and the time the parent was notified; and
  - 3. Maintains documentation of the accident, injury, or emergency on facility premises in a file that is separate from the current Emergency, Information, and Immunization card for 24 months from the date of the child's disenrollment.
- I. A licensee shall ensure that at least one staff member who has current training in first aid and at least one staff member who has current training in CPR, as required by R9-5-403(E), is present at all times on facility premises, on field trips or while transporting enrolled children in a facility's motor vehicle or a vehicle designated by the licensee to transport children. This requirement may be met by a single staff member who has current training in both first aid and CPR.

- J. A licensee shall prohibit the use or possession of the following items when an enrolled child is on facility premises, during hours of operation, or in any motor vehicle when used by the licensee for transportation of enrolled children:
1. Any beverage containing alcohol;
  2. A controlled substance as listed in A.R.S. Title 36, Chapter 27, Article 2;
  3. A dangerous drug as defined in A.R.S. § 13-3401;
  4. A prescription medication as defined in A.R.S. § 32-1901 except where used in the manner prescribed; or
  5. A firearm as defined in A.R.S. § 13-105.
- K. At least once a month, and at different times of the day, a licensee shall ensure that an unannounced fire evacuation drill is conducted that includes each staff member and child at the facility.
1. If child care services for a child with special needs are provided at a facility, the licensee shall provide for the child's participation in each fire evacuation drill in accordance with the child's individualized plan as specified in R9-5-507(A)(1).
  2. A licensee shall keep a written record of each fire evacuation drill on facility premises for 12 months from the date of the drill.
- L. A licensee shall ensure that a written performance evaluation of each staff member is conducted every 12 months from the date of employment.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 13 A.A.R. 3492, effective December 1, 2007 (Supp. 07-4).

**Guidelines for Compliance (R9-5-301 - General Licensee Responsibilities)**

**R9-5-301 (B) (2) (b) & (c)**

- *A director must designate a staff member at the facility, who meets the qualifications in R9-5-301 (B) (2) (b) & (c), to act on the director's behalf when the director is not present at the facility.*
- *When five or fewer children are present at a facility, and one staff member is present, the staff member must meet the qualifications of a staff member designated to act on the director's behalf.*

**R9-5-301 (C)**

- *A licensee must have policies and procedures for the daily operation of the facility. The policies and procedures may be documented in any format, including in a brochure, pamphlet, or on paper. The staff member in charge of the facility must be able to rely on the policies and procedures to operate the facility.*

**R9-5-301 (E) (1) & (2)**

- *If a facility has an entry door that is kept locked during regular business hours, the licensee must grant "immediate access" to a parent, or a representative from the Department, the local health department, Child Protective Services, and local fire department or State fire Marshal.*

**NOTE:** "Immediate access" means that the entry door is required to be opened without hesitation.

*For example, "immediate access" may be obtained by means of a keypad or swipe card, which is provided to a person listed in R9-5-301 (E) (1) & (2).*

**NOTE:** A licensee shall request approval from the Department before the licensee uses a security system and send instructions to the Department explaining how the security system works.

**R9-5-301 (G) (1) & (2)**

- *A new employee must present proof that the employee is free from tuberculosis. This proof is required within 12 hours of employment and may be in the form of a physician's note or a report of a negative Mantoux skin test.*

- *A staff member may claim a medical or religious exemption to the Mantoux skin test. If the staff member claims the exemption, the staff member is required to obtain a physician's written statement that the staff member is currently free from tuberculosis.*

**NOTE:** *Written documentation should include a physician's signature.*

**R9-5-301 (H) (2)**

- *A staff member is not required to document skinned knees, bruises, or other injuries unless a child requires treatment by a health care provider, a visit to a hospital, or a call to 911.*

**R9-5-301 (I)**

- *If a parent volunteer is transporting children in a vehicle on a field trip, the parent volunteer is not required to have current training in CPR and first aid if there is a staff member with current training in CPR and first aid in the vehicle.*

**R9-5-301 (K)**

- *A public school or child care facility that operates before and after school programs must have fire drills, at least once a month, during the before and after school program's hours of operation.*

**R9-5-302. Statement of Child Care Services**

- A. A licensee shall prepare a written statement regarding child care services that includes:
1. A description of the facility's child care services classifications in R9-5-205;
  2. Hours of operation;
  3. Child enrollment and disenrollment procedures;
  4. Charges, fees, and payment requirements for child care services;
  5. Child admission and release requirements;
  6. Discipline guidelines and methods;
  7. Transportation procedures;
  8. Field trip requirements and procedures;
  9. Responsibilities and participation of parents in facility activities;
  10. A description of all activities and programs;
  11. Liability insurance required by R9-5-308 that is carried by the licensee;
  12. Medication administration procedures;
  13. Emergency medical procedures;
  14. A notice stating inspection reports are available, upon request; and
  15. A provision stating that the facility is regulated by the Arizona Department of Health Services including the Department's address and telephone number.
- B. A licensee shall provide a copy of the written statement of child care services:
1. To the Department:
    - a. At the time the licensee's facility receives an initial license,
    - b. Every 12 months from the date of the initial license as required by A.R.S. § 36-883.01, and
    - c. When a change occurs in the child care services provided by the licensee; and
  2. To a parent when:
    - a. A parent's child is enrolled,
    - b. A parent requests a copy of the written statement of child care services, or
    - c. There is a change in the child care services provided by the licensee.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended subsection (A) effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-302 - Statement of Child Care Services)**

**R9-5-302 (A) (6)**

- *A statement of services must include discipline guidelines and methods for each age group in the facility.*

**R9-5-302 (B) (1) (c)**

- *Any time a licensee changes the facility's hours of operation due to an extended holiday, a personal reason, etc., the licensee must provide the Department with a written statement of the change before the change occurs. Regular mail, email, a facsimile, or a hand delivered statement may be used to provide the Department with the written statement explaining the change of the facility's hours of operation.*

**R9-5-303. Posting of Notices**

- A. A licensee shall designate a wall area or notice board inside the facility's entrance, in a place that can be conspicuously viewed by individuals entering or leaving the facility, for the posting of the:
1. Current license;
  2. Name of the facility director;
  3. Name of the individual designated to act on behalf of the facility director when the facility director is not present in the facility, as prescribed by R9-5-301(B)(1);
  4. Schedule of child care services fees and policy for the refund of fees as prescribed by A.R.S. § 36-882(K);
  5. Breakfast, lunch, dinner, and snack menus for each calendar week at the beginning of the calendar week;
  6. Notice of the presence of any communicable disease or infestation listed in 9 A.A.C. 6, Article 2, Table 2, from the date of discovery through the incubation period of the communicable disease or infestation;
  7. Notice of denial, revocation or suspension as prescribed by A.R.S. § 36-888;
  8. Notice of an intermediate sanction imposed as prescribed by A.R.S. § 36-891.01;
  9. Notice of legal injunction imposed as prescribed by A.R.S. § 36-886.01; and
  10. Notice of the availability of facility inspection reports for public viewing.
- B. A licensee shall ensure that the licensed capacity of each activity area or room is posted in that activity area.
- C. A licensee shall post a notification of pesticide application in each activity area and in each entrance of a facility, at least 48 hours before a pesticide is applied on the facility's premises, containing:
1. The date and time of the pesticide application, and
  2. A statement that written pesticide information is available from the licensee upon request.
- D. A licensee is exempt from the provisions in subsection (C), as prescribed by A.R.S. § 36-898(C).

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 13 A.A.R. 3492, effective December 1, 2007 (Supp. 07-4).

**Guidelines for Compliance (R9-5-303 - Posting of Notices)**

**R9-5-303 (A) (1)**

- *A copy of the current license may be posted.*

**R9-5-303 (A) (4)**

- *Providers must post their fees.*

**R9-5-304. Enrollment of Children**

- A. A licensee shall require that a child be enrolled by the child's parent or an individual authorized in writing by the parent.
- B. At the time of enrollment, a licensee shall require a child's parent to complete an Emergency, Information, and Immunization Record card that is signed by a parent containing:
1. The child's name, home address, home telephone number, sex, and date of birth;
  2. The date of the child's enrollment;
  3. The names, home and business addresses, and telephone numbers of the child's parents;
  4. The names, addresses, and telephone numbers of individuals authorized by a parent to collect a child from the facility if the parent cannot be located;
  5. The names of individuals not permitted by a parent to remove the child from a facility;
  6. The names, addresses, and telephone numbers of a child's physician or health care provider and hospital;
  7. The written authorization and parent instructions for emergency medical care of the parent's child when the parent cannot be contacted at the time of the emergency;
  8. The written instructions of a parent or health care provider for nutritional and dietary needs of a child;
  9. A written record completed by a parent or health care provider noting a child's susceptibility to illness, physical conditions of which child care personnel should be aware, and any individual requirements for health maintenance; and
  10. A child's immunization record or a notation of exemption affidavit, required by R9-5-305(A).

- C. A licensee shall maintain a current Emergency, Information, and Immunization Record card for each enrolled child on facility premises in a place that provides child care personnel ready access to the card in event of an emergency at, or evacuation of, the facility.
- D. When a child is disenrolled from a facility, the licensee shall:
1. Enter the date of disenrollment on the child's Emergency, Information, and Immunization Record card; and
  2. Maintain the records in subsection (D)(1) for 12 months from the date of disenrollment on facility premises in a place separate from the current Emergency, Information, and Immunization Record cards. If a licensee is a school governing board, a charter school, or a person operating multiple child care facilities, the licensee may maintain disenrollment records in a single central administrative office located in the same city, town, or school attendance area as the facility.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-304 - Enrollment of Children)**

**R9-5-304 (B)**

- *A school age child who is not enrolled, but visits a preschool classroom in a public school, is considered a visitor and does not need an Emergency, Information, and Immunization Record (EIIR) card.*
- *The Department issued EIIR card must be used by all licensed facilities. Licensees may NOT change the information required to be on the EIIR card or create their own cards.*
- *A child's parent is required to complete an EIIR card at the time of enrollment. A staff member may update the EIIR card with information obtained from the child's parent. It is recommended, but not required, that an update written on the card by a staff member is initialed and dated. A staff member may only make changes authorized by a parent.*
- *A person who visits a facility, accompanied by a child who is not enrolled at the facility, is responsible for the child.*

**R9-5-304 (B) (4)**

- *A pager number may not be substituted for a telephone number. A pager number is not allowed because a pager number does not guarantee an immediate response.*

**R9-5-304 (B) (10)**

- *An immunization record must be affixed to the Emergency, Information, and Immunization Record card. As information is updated, it must be attached to the card.*

**R9-5-304 (C)**

- *EIIR cards need to be on-site and readily accessible.*
- *Copies of the EIIR cards are allowed to be stored in a classroom; away from the place the originals are stored. The EIIR copies should include updates from the original EIIR cards.*
- *A licensed public school program must maintain all updated EIIR cards on the school premises.*

**R9-5-305. Child Immunization Requirements**

- A. A licensee shall not permit an enrolled child to attend a facility until the facility receives either a child's written immunization record or an exemption affidavit.
1. A child's immunization record provided by a parent shall contain the information required by A.A.C. R9-6-703 provided by a health care provider, stating that the child has received all current, age-appropriate immunizations required by the Department under A.A.C. R9-6-701(A) and (B).
  2. An exemption affidavit provided by a parent shall consist of:
    - a. A statement, signed by a child's health care provider, that the immunizations required by the Department as prescribed in A.A.C. R9-6-701(A) and (B) would endanger a child's health or medical condition; or

- b. A statement, signed by a child's parent, that the child is being raised in a religion whose teachings are in opposition to immunization.
- B. A licensee shall ensure that a staff member updates a child's immunization record on the child's Emergency, Information, and Immunization Record card each time a parent provides the licensee with a written statement from a child's health care provider that the child has received an age-appropriate immunization required by R9-6-701(A) and (B).
- C. If a child's immunization record indicates that a child has not received an age-appropriate immunization required by A.A.C. R9-6-701(A) and (B), a licensee shall ensure that a staff member:
  1. Notifies a parent in writing that the child may attend the facility for not more than 15 days from the date of the notification unless the parent provides the facility with written evidence of the required immunization or an exemption affidavit as prescribed by subsection (A)(2); and
  2. Documents in the child's immunization record the date on which a parent is notified of an immunization required by the Department.
- D. If a licensee is notified by a parent, staff member, or health care provider, that a child or staff member has a communicable disease, the licensee shall ensure that child care personnel do not permit a child who lacks written evidence of immunity to the communicable disease to be present in the facility until:
  1. A parent provides written evidence of the child's immunity to the disease; or
  2. A local health department notifies the licensee that the child may return to the facility.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**R9-5-306. Admission and Release of Children; Attendance Records**

- A. A licensee shall maintain a written or electronically logged and dated attendance form containing a child's name with the time of each admission and release of the child.
  1. A licensee shall ensure that the attendance form is signed with at least a first initial and last name by each child's parent or individual designated in writing or by telephone by a parent, each time the child is admitted or released. An electronic fingerprint verification may be used in place of a signature of a parent or designated individual to verify identity before admitting or releasing a child.
  2. Before releasing a child to an individual other than a parent, a licensee shall require each individual collecting a child to present picture identification.
  3. A licensee shall not release a child to an individual other than a child's parent or other individual designated in writing by a parent except when the parent is unable to collect the child and authorizes the licensee by telephone to release the child to an individual not so designated. The licensee shall verify the telephone authorization using a means of verification that has been agreed upon between the licensee and the parent at the time of enrollment.
  4. A licensee shall not permit the self-admission or self-release of an enrolled child unless the child is of school age and the licensee has obtained and verified written permission from the child's parent.
  5. A licensee shall maintain the attendance form on facility premises for 12 months from the date of attendance.
- B. A licensee shall ensure that a staff member prepares and maintains a roster each day for each child under the staff member's supervision that:
  1. Is dated;
  2. Lists the first and last name of each child physically present; and
  3. Is maintained on facility premises for three months from the date of attendance.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended subsection (B) effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-306 - Admission and Release of Children; Attendance Records)**

**R9-5-306 (A) (1)**

- *A parent of a child may authorize a staff member to sign the child in and out of the facility.*
- *If two facilities owned by the same licensee want to transport a child from one facility to another, each facility must have parental permission to sign each child in and out. Each facility must maintain a current EIIR card for each child transported.*

**NOTE:** *When a staff member picks up a school-age child at a public school, the child must be signed in when the child enters the vehicle, not when the vehicle returns to the facility. The licensee is responsible for the child once the child enters the vehicle.*
- *The rule requires the attendance form to contain "a child's name." Based on the use of "name" in other areas of the rules, the attendance form should have the child's first and last*



*name and the first initial and full last name of a parent or individual designated to admit and release the child.*

**R9-5-306 (A) (2)**

- *When written permission is obtained from the parent of a child to release the child to a sibling, the sibling must produce picture identification.*

**R9-5-306 (A) (3)**

- *A licensee is not required to release a child with a telephone authorization. Releasing a child based on a telephone authorization is at the discretion of the licensee.*

**R9-5-306 (A) (4)**

- *A licensee is not responsible for a child until an authorized person signs the child into the facility.*

**R9-5-306 (B) (1) - (3)**

- *When a child enters a room in the facility, the staff member supervising the child must record the child's attendance on a roster in the room. If a child goes into multiple rooms throughout the day, the staff member supervising the child in each room must record on a roster that the child is currently in that room. In case of a fire or other emergency, the staff responsible for the children in a room must have an accurate list of the children present in that room.*

**R9-5-307. Suspected or Alleged Child Abuse or Neglect**

A licensee or staff member shall document and report all suspected or alleged cases of child abuse or neglect.

1. A licensee or staff member shall report the suspected or alleged child abuse or neglect to Child Protective Services or to a local law enforcement agency as prescribed in A.R.S. § 13-3620. The licensee or staff member shall notify the Department of the suspected or alleged child abuse or neglect by any means available within 24 hours of the required report. The licensee or staff member shall also send written documentation to the Department, Child Protective Services, and any local law enforcement agency previously notified within three days of the initial report, and maintain written documentation of a child abuse or neglect report on facility premises for 12 months from the date of a report.
2. A licensee or staff member shall report the suspected or alleged child abuse by a staff member to the Department and to a local law enforcement agency as prescribed in A.R.S. § 13-3620. A licensee or staff member shall also send written documentation to the Department and to any law enforcement agency previously notified within three days of the initial report, and maintain written documentation of a child abuse report on facility premises for 12 months from the date of a report.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-307 - Suspected or Alleged Abuse or Neglect)**

**R9-5-307 (1)**

- ***A.R.S. §13-3620 (A) states that any person who reasonably believes that a minor has been the victim of physical injury, abuse, or neglect has a duty to report to CPS or law enforcement.***

**R9-5-308. Insurance Requirements**

A. A licensee shall secure and maintain the following minimum insurance coverage:

1. General facility liability insurance of at least \$300,000; and
2. Motor vehicle insurance coverage required by R9-5-517(A)(2) for each motor vehicle used by a licensee to transport enrolled children.

B. A licensee shall provide a copy of each certificate of insurance to the Department before issuance of a license and at any time that the licensee's insurance coverage expires, is canceled, or changes.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-308 - Insurance Requirements)**

**R9-5-308 (B)**

- *School districts and other governmental agencies are often self-insured or insured through an internal risk management system. A copy of this coverage is required.*
- *An administrator of a self-insured and risk management type of insurance may provide a certificate of insurance.*
- *A copy of a premium payment is not acceptable as proof of insurance. A certificate of insurance is required.*

**R9-5-309. Sanitation, Gas, and Fire Inspections**

- A. A licensee shall obtain the following health and safety inspections of a facility, according to the following schedules, and make any repairs or corrections stated on an inspection report before a license is issued by the Department:
1. Sanitation inspections, conducted a minimum of every 12 months by a local health department;
  2. Gas inspections, conducted a minimum of every 12 months by a plumber holding a plumbing business license issued by a local government; and
  3. Fire inspections, conducted a minimum of every 36 months by a local fire department or the State Fire Marshal.
- B. A licensee shall maintain current reports of sanitation, gas, and fire inspections and documentation of any repairs or corrections on facility premises.

**Historical Note**

Adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-309 - Sanitation, Gas, and Fire Inspections)**

**R9-5-309 (A) (3)**

- *A local fire department or the State Fire Marshal may conduct fire inspections and provide documentation of the fire inspections. Documentation of a self-fire inspection is permitted only if authorized in writing by a local fire department or the State Fire Marshal.*

**R9-5-310. Pesticides**

- A. A licensee shall make written pesticide information available to a parent, upon a parent's request, at least 48 hours before a pesticide application occurs on a facility's premises, containing:
1. The brand name, concentration, rate of application, and any use restrictions required by the label of the herbicide or specific pesticide;
  2. The date and time of the pesticide application;
  3. The pesticide label and the material safety data sheet; and
  4. The name and telephone number of the pesticide business licensee and the name of the licensed applicator.
- B. A licensee is exempt from the provisions in subsection (A), as prescribed by A.R.S. § 36-898(C).

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3492, effective December 1, 2007 (Supp. 07-4).

**ARTICLE 4. FACILITY STAFF**

**R9-5-401. Staff Qualifications**

A licensee shall ensure that child care personnel meet the following qualifications for employment or volunteer service at a facility.

1. A facility director is 21 years of age or older and provides the licensee with written documentation of one of the following:
  - a. High school or high school equivalency diploma and six credit hours or more in early childhood, child development, or closely related field in an accredited college or university, or 60 actual hours of instruction, provided in conferences, seminars, lectures, or workshops in the areas of early childhood, child development, or closely related field, and 24 months or more of child care experience;
  - b. N.A.C., C.D.A., C.C.P., or C.P.C. credential and at least 18 months of child care experience;
  - c. A minimum of 24 credit hours from an accredited college or university, including at least six credit hours of course work in the areas of early childhood, child development, or closely related field, and 18 months of child care experience;
  - d. Associate degree from an accredited college or university in the areas of early childhood, child development, or closely related field, and six months of child care experience; or

- e. Bachelor degree from an accredited college or university in the areas of early childhood, child development, or closely related field, and three months of child care experience.
2. A teacher-caregiver is 18 years of age or older and provides the licensee with written documentation of one of the following:
  - a. High school or high school equivalency diploma and six months of child care experience;
  - b. N.A.C., C.D.A., C.C.P., or C.P.C. credential; or
  - c. Associate or bachelor degree from an accredited college or university in the areas of early childhood, child development, or closely related field.
3. An assistant teacher-caregiver is 16 years of age or older and provides the licensee with written documentation of one of the following:
  - a. Current and continuous enrollment in high school or a high school equivalency class,
  - b. High school or high school equivalency diploma,
  - c. Enrollment with a STRIVE program, or
  - d. Enrollment in vocational rehabilitation as defined in A.R.S. § 23-501(8).
4. A student-aide provides the licensee with written documentation of enrollment in:
  - a. A high school STRIVE program;
  - b. An educational, curriculum-based course in child development, parenting, or guidance counseling; or
  - c. A vocational education or occupational development program.
5. A volunteer is 16 years of age or older.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). R9-5-401(1)(a) has been corrected to reflect staff qualifications on file and as published in the 97-4 Code Supplement (04-4).

**Guidelines for Compliance (R9-5-401 - Staff Qualifications)**

**R9-5-401**

- *When an employee is hired to perform non-child care duties, such as a cook or a janitor, the employee is not required to meet the qualifications detailed in **R9-5-401**. If a cook or janitor is in a classroom performing child care duties, the cook or janitor must have written documentation of the qualifications in **R9-5-401**.*

**R9-5-401 (1) (a)**

- *A director applicant, who has only worked with children in a Parks and Recreation program or exempt child care, may meet the requirements for child care experience.*
- *A correspondence course may be counted toward the six credit hours, required for a facility director, if it is obtained from an accredited college or university.*

**R9-5-401 (3) (a)**

- *The rule does not state a time frame for completion of a high school equivalency diploma or a high school diploma and the Department of Education has not set time frames. Documentation of enrollment in a high school or a high school equivalency class is required to be in an assistant teacher caregiver's file.*

**R9-5-401 (5)**

- *A 15-year-old in a facility must be enrolled in an educational course of study to be a staff member at the facility and is considered a student-aide, not a volunteer. A person who is 16 or 17 years old may be considered a volunteer and may do community service at a child care facility. A complete staff file, except the fingerprint registration for a 16 or 17 year old, is required for a volunteer over 18 years of age. A 15, 16, and 17 year old must be supervised by qualified staff at all times.*

**R9-5-402. Staff Records and Reports**

- A. A licensee shall maintain a file for each staff member containing:
  1. The staff member's name, date of birth, home address, and telephone number;
  2. Documents required by R9-5-401;
  3. Name and telephone number of an individual or health care provider to be notified in case of emergency;

4. Documents required by R9-5-301(F);
  5. The staff member's written statement attesting to current immunity against measles, rubella, diphtheria, and tetanus;
  6. A copy of any current license or certification required by A.R.S. § 36-881 et seq. or these rules;
  7. Written documentation from the Department verifying registration compliance with the Department according to A.R.S. § 36-883.02;
  8. Written documentation of training provided by a licensee as required by R9-5-403;
  9. The staff member's starting dates of employment or volunteer service;
  10. The staff member's ending dates of employment or volunteer service, if applicable;
  11. All written performance evaluations of the staff member conducted by the licensee as required by R9-5-301(K); and
  12. At least two personal and two professional references, including at least one written personal reference and at least one written professional reference from a previous employer, and documentation of the licensee's good faith effort to contact each reference.
- B. A licensee shall ensure that a staff member's information, required by subsections (A)(1) through (12), is maintained in a single location on facility premises. If a licensee is a school governing board, a charter school, or a person operating multiple child care facilities, the licensee shall maintain the information required by subsections (A)(1) through (10) on facility premises, but may maintain the information required by subsections (A)(11) and (12) in a single, central administrative office located in the same city, town, or school attendance area as the facility.
- C. A licensee shall ensure the records and reports required by this rule are maintained throughout a staff member's period of employment or volunteer service and for 12 months from a staff member's last date of employment or volunteer service.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-402 - Staff Records and Reports)**

**R9-5-402 (A)**

- *When a parent visits a classroom to participate in activities with the parent's child, a staff file is not required for the parent. When a parent participates in activities with a child other than the parent's child, a staff file is required for the parent.*

**R9-5-402 (A) (2)**

- *An Emergency Teaching Certificate in a teacher-caregiver's file is not sufficient to document educational requirements. The rule requires the educational documentation to be in the file to back up the Emergency Certification.*

**R9-5-402 (A) (5)**

- *A staff file that contains a signed statement of immunity is acceptable with or without a copy of the staff member's immunization record.*

**R9-5-402 (A) (11)**

- *A director of a facility is required to have a written performance evaluation every 12 months, unless the director is the licensee.*

**R9-5-402 (A) (12)**

- *The rule requires a licensee to document its good faith efforts to contact all references. If an employee is new to the work force, a professional reference from a previous employer may be a teacher, pastor, etc.*
- *A reference form mailed out by the licensee, completed, and then returned to the facility, is considered a valid reference. If a reference form is mailed back to the licensee and it has not been filled out, the Department may consider this a good faith effort to contact the reference.*

**R-5-402 (B)**

- *Staff files must be readily accessible in a single location. Staff files scanned and stored in a computer are not considered readily accessible.*

**R9-5-403. Training Requirements**

- A. A licensee shall provide, and each staff member who provides child care services to children, shall complete within 10 days of the starting date of employment or volunteer service, training for new staff members that includes all of the following:
1. Facility philosophy and goals;
  2. Names, ages, and needs of children to be assigned to a staff member;
  3. Health needs, nutritional requirements, and information about adaptive devices of children for whom a staff member will provide child care services;
  4. Lesson plans;
  5. Child guidance and methods of discipline;
  6. Hand washing techniques;
  7. Diapering techniques and toileting, if assigned to diaper changing duties;
  8. Food preparation, service, sanitation, and storage, if assigned to food preparation;
  9. Infant formula preparation, if assigned to formula preparation;
  10. Recognition of signs of illness and infestation;
  11. Child abuse or neglect detection, prevention, and reporting;
  12. Accident and emergency procedures;
  13. Staff responsibilities as required by A.R.S. § 36-881 et seq. and these rules;
  14. Sun safety policies and procedures; and
  15. Safety on outdoor activity areas.
- B. A licensee shall ensure that, every 12 months from a staff member's date of employment, the staff member completes 12 or more actual hours of training in one or more of the following areas:
1. Accident and emergency procedures, including CPR and first aid for infants and children;
  2. Recognition of signs of illness and infestation;
  3. Child growth and development;
  4. Child abuse or neglect detection, reporting, and prevention;
  5. Child guidance and methods of discipline;
  6. Nutrition and developmentally appropriate eating habits;
  7. Availability of community services and resources, including those available to children with special needs;
  8. Parent involvement and communication with parents;
  9. Program administration, planning, and development;
  10. Environment of child care activity areas;
  11. Sun safety policies and procedures; and
  12. Safety on outdoor activity areas.
- C. A licensee shall ensure that documentation of a staff member's completion of training required by subsection (A) is signed by the facility director and dated.
- D. A licensee shall ensure that a staff member submits to the licensee documentation of training received as required by subsection (B) to the licensee as the training is completed.
- E. A licensee shall ensure that a staff member required by R9-5-301(H) meets all of the following:
1. The staff member obtains first aid training specific to infants and children,
  2. The staff member obtains CPR training specific to infants and children which includes a demonstration of the staff member's ability to perform CPR,
  3. The staff member maintains current training in first aid and CPR, and
  4. The staff member provides the licensee with a copy of the front and back of the current card issued by the agency or instructor as proof of completion of the requirements of this subsection.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended subsection (A) effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-403 - Training Requirements)**

**R9-5-403 (B)**

- *The new staff member training required in R9-5-403 (A) may count toward the 12 hours of annual training, only for the first 12 months after the staff member's starting date of employment. The staff member must provide documentation of the training topic and the number of hours completed.*
- *If the cook, maintenance staff, or lunch aide does not perform child care duties, the cook, maintenance staff, or lunch aide is not required to complete annual training.*
- *A substitute teacher who works in a licensed program for 12 months is required to document annual training.*

***R9-5-403 (C)***

- *A director of a facility, who is also a licensee, is required to have written documentation of the new staff training. A self-orientation is acceptable.*

***R9-5-403 (D)***

- *An actual certificate is not required, but recommended.*
- *Documentation of training shall include the type of training, date of training, and the hours of the training.*

***R9-5-403 (E) (4)***

- *If a CPR or first aid card lacks an issue date, the card cannot be accepted.*

**R9-5-404. Staff-to-Children Ratios**

- A. A licensee shall ensure that at least the following staff-to-children ratios are maintained at all times when providing child care services to enrolled children:

<i>Age Group</i>	<i>Staff: Children</i>
Infants	1:5 or 2:11
1-year-old children	1:6 or 2:13
2-year-old children	1:8
3-year-old children	1:13
4-year-old children	1:15
5-year-old children not school-age	1:20
School-age children	1:20

- B. A licensee shall:

1. Ensure that an enrolled child is placed in an age-appropriate or developmentally appropriate group;
2. Determine and maintain the required staff-to-children ratio for each group of enrolled children based on the age of the youngest child in the group;
3. Allow a volunteer to be counted as staff in staff-to-children ratios; and
4. Not allow a student-aide to be counted as staff in staff-to-children ratios.

- C. A licensee shall ensure that:

1. At least two staff members are on facility premises when six or more children of any age group are present in a facility;
2. At least one staff member who meets the qualifications of a teacher-caregiver is present when an enrolled child is in a facility;
3. When five or fewer enrolled children are present in a facility, and one staff member is present in a facility, an additional staff member is available by telephone or other equally expeditious means and able to reach the facility within 15 minutes after notification; and
4. When six or more enrolled children are present in a facility, an infant is not placed for supervision with children who are not infants.

- D. A licensee may allow a staff member to perform duties other than child care if the duties are not undertaken simultaneously with the supervision of children in the staff member's charge.

- E. In addition to maintaining the required staff-to-children ratios, a licensee shall ensure that staff members are present on facility premises to perform facility administration, food preparation, food service, and maintenance responsibilities. Facility maintenance shall not be dependent on the work of enrolled children.

- F. When six or more enrolled children are participating in a field trip, a licensee shall ensure that a teacher-caregiver and at least one additional staff member are present on the field trip.

- G. If a licensee conducts swimming activities at a swimming pool that has a lifeguard on the premises who has current lifesaving certification from the American Red Cross, the licensee shall maintain staff-to-children ratios required by subsection (A).

- H. If a licensee conducts swimming activities at a swimming pool that does not have a lifeguard on the premises who has current lifesaving certification from the American Red Cross, the licensee shall maintain staff-to-children ratios stated in subsection (A) and have at least one additional staff member present who:

1. Has current lifesaving certification from the American Red Cross; and
2. Is in the pool or observing pool side while enrolled children are at the pool.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 13 A.A.R. 1086, effective May 5, 2007 (Supp. 07-1).

**Guidelines for Compliance (R9-5-404 - Staff-to-Children Ratios)**

**R9-5-404 (A)**

- *If a parent participates in activities with the parent's child in the presence of child care personnel, the parent is not considered a staff member for staff-to-children ratios. If a parent participates in activities with a child other than the parent's child, the parent is considered a staff member for staff-to-children ratios. The parent that is considered a staff member must meet the requirements in R9-402 (A).*
- *A child under 16 years of age must be enrolled, be a student-aide, or accompanied by a parent if the child is in the facility.*

**R9-5-404 (C) (4)**

- *When there are less than six children present in the facility, and one or more of the children are infants, the infants do not need to be in the designated infant room. These children will need to be in a room with an approved diaper changing area.*

**R9-5-404 (D) & (H)**

- *A staff member who has lifeguard certification is not allowed to supervise children and instruct children swimming at a swimming pool. The staff member acting as a swimming instructor is not counted in staff-to-children ratios.*

**R9-5-404 (F)**

- *When six or more children are transported on a field trip, the licensee must have at least one staff member, in addition to the van driver, in the van, to supervise the children. At least one staff member on a field trip must be a teacher-caregiver.*

**R9-5-404 (G) & (H)**

- *The Department will accept only the American Red Cross certification.*

**ARTICLE 5. FACILITY PROGRAM AND EQUIPMENT**

**R9-5-501. General Child Care Program and Equipment Standards**

- A. A licensee shall ensure that:
  - 1. The health, safety, or welfare of an enrolled child is not endangered;
  - 2. All designated exits, corridors, and passageways that provide escape from the building are unobstructed and unlocked during hours of operation;
  - 3. Combustible material such as paper, boxes, or rags is not permitted to accumulate inside or outside the facility premises;
  - 4. Drinking water is provided sufficient for the needs of and accessible to each enrolled child in both indoor and outdoor activity areas;
  - 5. Activity areas used by children are decorated with age-appropriate articles such as mirrors, bulletin boards, pictures, and posters;
  - 6. Age-appropriate toys, materials, and equipment are provided to enable each child to participate in an activity.
    - a. Toys, materials, and equipment are maintained in a clean condition.
    - b. Storage space is provided in the facility for indoor and outdoor toys, materials, and equipment in areas accessible to enrolled children;
  - 7. Clean clothing is available to a child when a child needs a change of clothing;
  - 8. If a staff member places a child in a high chair when feeding a child:
    - a. The high chair is equipped with a safety strap;
    - b. The high chair is constructed to prevent toppling;
    - c. The tray or feeding surface of the high chair is smooth and free of cracks; and
    - d. The staff member:

- i. Fastens the safety strap while a child is in the high chair; and
    - ii. Sanitizes the tray or feeding surface before each child's use;
  9. The facility conforms to the standards prescribed in R9-5-511 and the following for a child who will be present at the facility during evening and nighttime hours:
    - a. Permit a mat only when used on top of a cot;
    - b. Before bathing a child at a facility, obtain written consent and bathing instructions from a parent and follow the instructions while bathing the child;
    - c. Require that a staff member clean and sanitize a bathtub or shower stall after bathing each child;
    - d. Require that a staff member remain awake while supervising a sleeping child; and
    - e. Prohibit operation of a television set in a room where a child is sleeping.
  10. The facility conforms to the standards prescribed in R9-5-511 and the following for naptime:
    - a. A child is not permitted to lie in direct contact with the floor while napping;
    - b. A television set is not operated in a room in which a child is napping;
    - c. Naptime accommodations are available for an enrolled school-age child if requested by the child or a parent;
    - d. Light is provided in naptime areas for observing a sleeping child; and
    - e. An attic or loft is not used for naptime;
  11. An activity area is equipped with at least one cot or mat, a sheet, and a blanket, where a child can be separated from other children for quiet time;
  12. Written permission is obtained from a child's parent before allowing the child to participate in a swimming activity;
  13. Outdoor activities are scheduled to allow not less than 75 square feet for each child occupying the facility's outdoor activity area at any time;
  14. The facility's buildings, premises, and indoor and outdoor play equipment are maintained in good repair and free from hazards;
  15. The facility conforms to the following heating and cooling standards:
    - a. Temperatures are maintained between 68° F and 82° F in each room used by children;
    - b. Heating and cooling equipment is inaccessible to children;
    - c. Fans are mounted and inaccessible to children;
    - d. An unvented or open-flame space heater or portable heater is not used on the facility premises; and
    - e. A gas valve on an unused gas outlet is removed and capped where it emerges from the wall or floor;
  16. The facility conforms to the following lighting and electrical standards:
    - a. Except when a child is napping or sleeping, each room used by enrolled children is maintained at a minimum of 30 foot candles of illumination;
    - b. Each unused electrical outlet is covered with a safety plug cover or insert;
    - c. Crockpots and hot plates are used only in a kitchen and are inaccessible to children; and
    - d. Electrical extension cords are not used;
  17. The facility conforms to the following toilet room standards:
    - a. Plumbing fixtures are maintained in a clean and working condition;
    - b. Chipped or cracked sinks and toilets are replaced or repaired;
    - c. Toilet rooms are ventilated to the outside of the building, either by a screened window open to the outside air or by an exhaust fan and duct system that is operated when the toilet room is in use;
    - d. A toilet room with a door that opens to the exterior of a building is equipped with a self-closing device that keeps the door closed except when an individual is entering or exiting; and
    - e. A toilet room door does not exit into a kitchen;
  18. Storage space is provided in the facility for cots, mats, sheets, and blankets accessible to an area used for naptime or sleeping and separate from food service and preparation, toilet rooms, and laundry rooms;
  19. Each child's toothbrush, comb, washcloth, cloth towel, and clothing is maintained in a clean condition and stored in an identified space separate from those of other children;
  20. All materials and chemicals labeled as a toxic or flammable substance are stored in an area inaccessible to children that is locked with a key or combination lock and is separate from food storage areas;
  21. All substances that may be a hazard to a child and have a child warning label are inaccessible to children and stored separately from food storage areas; and
  22. Garden tools, lawn mowers, ladders, and other facility equipment presenting a hazard to children are stored in an area inaccessible to children.

B. A licensee shall ensure that a staff member:

  1. Supervises enrolled children at all times;
  2. Reports any suspected or alleged child abuse or neglect according to procedures prescribed in R9-5-307;
  3. Does not smoke or use tobacco on facility premises except in designated areas separated from the children;
  4. Cleans each enrolled child before and after each meal and changes a child's clothing when wet or soiled;
  5. Prepares, and posts in each activity area, a current schedule of children's age-appropriate activities, including the times the following are provided:
    - a. Meals and snacks;
    - b. Naps;
    - c. Indoor and outdoor activities;
    - d. Quiet and active activities;
    - e. Teacher-directed activities;



- f. Self-directed activities;
- g. Activities for individuals, groups of five or fewer children, and groups of six or more children; and
- h. Activities that develop small and large muscles;
6. Prepares and posts a dated lesson plan in each activity area for each calendar week which is maintained on facility premises for 12 months from the lesson plan date and provides opportunities for each child to:
  - a. Gain a positive self-concept;
  - b. Develop and practice social skills;
  - c. Think, reason, question, and experiment;
  - d. Acquire language skills;
  - e. Develop physical coordination skills;
  - f. Develop habits that meet health, safety, and nutritional needs;
  - g. Express creativity;
  - h. Learn to respect cultural diversity of children and staff;
  - i. Learn self-help skills; and
  - j. Develop a sense of responsibility and independence;
7. Does the following when a parent permits or asks a staff member to use external personal products for a child, such as petroleum jelly, diaper rash ointments, sun screen or sun block preparations, and baby diapering preparations:
  - a. Obtains the child's personal products from the parent or, if the licensee provides the personal products for use by the child, obtains written approval for use of the products from the parent;
  - b. Labels the personal products with the child's first and last name; and
  - c. Keeps the personal products inaccessible to children;
8. Places a child's wet or soiled laundry in a plastic bag labeled with the child's name, stores the laundry in a container covered with a tight fitting lid, and sends the laundry home when the facility releases the child to the child's parent; and
9. Monitors a child for overheating or overexposure to the sun. If a child exhibits signs of overheating or overexposure to the sun, a staff member who has the first aid training required by R9-5-403(E) shall evaluate and treat the child.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-501 - General Child Care Program and Equipment Standards)**

**R9-5-501 (A) (1)**

- *A child is not required to wear shoes inside or outside a facility unless there are potential hazards present.*
- *Allowing an infant to sleep on its back is a current best practice, not a rule.*
- *A bumper pad is in violation of the rule if any of the following occurs: the bumper pad has loose strings, there are gaps between the bumper pad and the mattress, or the bumper pad blocks a staff member's view of the child in the crib.*

**R9-5-501 (A) (2)**

- *Dead bolts are required to be unlocked during hours of operation.*

**R9-5-501 (A) (4)**

- *A licensee is responsible for supplying water to all enrolled children. Water/sports bottles may be an additional source of drinking water.*

**NOTE:** *It is recommended to have cups available in a vehicle to dispense water for emergency use.*

**R9-5-501 (A) (11)**

- *A licensee whose licensed space consists of only one room must have an activity area within the room for quiet time.*
- *A licensee may store a cot or mat, a sheet, and a blanket outside the classroom.*
- *An examination paper roll, such as used in a doctor's office, may not be used in place of a sheet.*
- *A cot or mat in a nurse's office may not be used as a substitute for the required cot or mat in an activity area.*

**R95-501 (A) (12)**

- *A licensee having a swimming pool on facility premises may conduct swimming activities on-site as a regularly scheduled activity.*

**R9-5-501 (A) (14)**

- *A light bulb must be covered if it is a hazard.*
- *Large climbing equipment/lofts shall be arranged in such a way that the equipment/lofts do not present a hazard.*

**R9-5-501 (A) (15) (b)**

- *When a hot water heater is located in a closet in a classroom and the door to the closet is closed but not locked, the hot water heater must be inaccessible to the children.*

**R9-5-501 (A) (16)**

- *A surge protector strip must have a safety cover if there is an unused electrical outlet on the surge protector.*

**R9-5-501 (A) (18)**

- *A toilet room may be used for storage space if the licensee notifies the Department, in writing, of the space utilization change. If the licensee does not notify the Department of the space utilization change, the licensee is in violation of **R9-5-206 (B)**.*

**R9-5-501 (A) (19)**

- *A licensee may store toothbrushes, within a single container, if the toothbrushes are labeled and stored in separate slots so that the bristles of each toothbrush are not touching.*

**R9-5-501 (A) (20)**

- *A licensee using a hand sanitizer as secondary sources of hand sanitizing must keep the hand sanitizer in a locked storage area.*

**R9-5-501 (A) (22)**

- *Items such as plungers, toilet brushes, mops, and mop buckets must be stored in areas inaccessible to children.*

**R9-5-501 (B) (1)**

- *Ratios must be maintained during naptime.*

**R9-5-501 (B) (3)**

- *A staff member may smoke in an area on the facility premises if the smoking area is separate from the licensed area and separate from the children. The licensee shall ensure that smoke does not enter any classroom through the ventilation system or by any other means.*

**R9-5-501 (B) (5)**

- *The time frames for infant and toddler activities may be scheduled in blocks of time. A schedule with general time frames would be acceptable. For example, “midmorning” and “late morning” on a schedule with a list of activities would be appropriate in an infant room.*

**R9-5-501 (B) (6)**

- *A lesson plan is required for infants.*
- *Activities on a lesson plan must be planned and documented for a calendar week.*

- *A lesson plan must be posted in each activity area. The licensee is not in compliance if the lesson plan is posted on the outside of a door leading into an activity area and the door is closed or if it is posted on the inside of the door and the door is open.*
- *A licensee who uses a book for a lesson plan must post the lesson plan, or a copy of the lesson plan for the week.*

**R9-5-501 (B) (7) (a)**

- *Sunscreen is considered a personal product. The licensee must obtain written approval from the parent of a child before providing the child with sunscreen from the facility's dispenser.*

**R9-5-502. Supplemental Standards for Infants**

- A. In addition to complying with all child care standards, a licensee providing child care services for infants shall:
1. Separate infants from children older than 12 months of age. Within 24 months from the effective date of these rules, a facility shall provide a wall enclosed room that provides exits required by R9-5-602(A) to separate infants from children older than 12 months of age;
  2. Post a list in each infant room stating each infant's name and assigned staff member;
  3. Provide active and quiet activities;
  4. Provide indoor and outdoor activities;
  5. Permit an infant to maintain an established pattern of sleeping and waking;
  6. Provide an outdoor activity area that is scheduled for use by infants when children older than infants are not present;
  7. Provide space, materials, and equipment in an infant room that includes the following:
    - a. An area with nonabrasive carpeting for sitting, crawling, and playing;
    - b. Toys, materials, and equipment in a quantity sufficient to meet the needs of the infants in attendance that include:
      - i. Toys for stacking, pulling, and grasping;
      - ii. Soft toys;
      - iii. Books;
      - iv. Mobiles;
      - v. Unbreakable mirrors; and
      - vi. Outdoor play equipment; and
    - c. At least one adult-size chair for staff members' use when holding or feeding an infant;
  8. Provide a crib for each infant that:
    - a. Has bars or openings spaced no more than 2-3/8 inches apart and a crib mattress measured to fit not more than 1/2 inch from the crib side;
    - b. Has a commercially waterproofed mattress; and
    - c. Is furnished with clean, sanitized, crib-size bedding, including a fitted sheet and top sheet or a blanket.
  9. Prohibit the use of stacked cribs; and
  10. Arrange the cribs to maintain a minimum spacing between cribs that is not less than two feet on any crib side that has bars or other openings, except when:
    - a. A crib side with bars is next to a wall; or
    - b. A crib end does not have bars and the cribs are placed end to end.
- B. A licensee providing child care services for infants shall not:
1. Allow an infant room to be used as a passageway to another area of the facility;
  2. Permit an infant who is awake to remain for more than 30 consecutive minutes in a crib, playpen, swing, high chair, infant seat, or other equipment that confines movement; or
  3. Permit a child to use a walker, except a child with special needs for whom a walker is prescribed by a health care provider.
- C. A licensee shall ensure that:
1. A staff member assigned to infants in an infant room:
    - a. Plays and talks with each infant;
    - b. Holds and rocks each infant;
    - c. Responds immediately to each infant's distress signals;
    - d. Keeps a dated, daily, written record of each infant's activities, food consumption, and diaper changes, and maintains the record on facility premises for three months from the record date. A staff member shall provide a copy of this record to the infant's parent upon request;
    - e. Removes soft pillows and toys from a crib when an infant is sleeping;
    - f. Cleans and sanitizes each crib and mattress used by an infant when soiled;
    - g. Changes each crib sheet and blanket before use by another child, when soiled, or at least every 24 hours; and
    - h. Cleans and sanitizes all sheets and blankets before use by another child.
  2. A staff member assigned to an infant in an infant room does not:
    - a. Place an infant directly on a waterproof mattress cover;
    - b. Restrain an infant in a crib or other restrictive equipment; or
    - c. Place an infant in a crib or other equipment that confines movement for disciplinary reasons.
  3. Before feeding an infant, a staff member:

- a. Obtains dated, written instructions from a parent or health care provider regarding the method of feeding and types of foods to be prepared or fed to an infant at the facility;
- b. Updates the written instructions as foods or methods are added or changed;
- c. Posts the current written instructions in the kitchen and infant room and maintains the instructions on facility premises for three months from the date of the instructions; and
- d. Follows the current written instructions of a parent when feeding the infant.
4. When preparing, using, or caring for an infant's feeding bottles, a staff member:
  - a. Labels each bottle received from the parent with the child's first and last name;
  - b. Ensures that a bottle is not:
    - i. Heated in a microwave oven,
    - ii. Propped for an infant feeding, or
    - iii. Permitted in an infant's crib unless the written instructions required by subsection (C)(3) state otherwise;
  - c. Empties and rinses bottles previously used by an infant; and
  - d. Cleans and sanitizes using heat only, a bottle, bottle cover, and nipple before reuse.
5. When feeding an infant, a staff member:
  - a. Provides an infant with food for growth and development that includes:
    - i. Formula provided by a parent or the licensee that is prepared and stored in a sanitary manner at the facility, following written instructions required by subsection (C)(3);
    - ii. Cereal as requested by a parent or health care provider. A staff member shall not mix cereal with formula and feed it to an infant from a bottle or infant feeder unless the written instructions required by subsection (C)(3) state otherwise; and
    - iii. Solid foods as requested by a parent. A staff member shall feed solid food to an infant by spoon from an individual container. A separate container and spoon shall be used for each infant;
  - b. Holds and feeds an infant under 6 months of age and an infant older than 6 months of age who cannot hold a bottle for feeding; and
  - c. If an infant is no longer being held for feeding, seats the infant in a high chair or at a table with a chair that allows the child to reach the food while sitting.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-502 - Supplemental Standards for Infants)**

**R9-5-502 (A) (1)**

- According to the DHS architects a "wall", in a wall-enclosed room, must be fixed, not movable, thus an accordion wall may not be used.
- If an infant room has a Dutch door, both parts of the door must be kept closed.

**NOTE:** A Dutch door is defined as, "a door divided horizontally into halves, each opening and closing independent of each other, or latched together to act as one door."

**R9-5-502 (A) (4)**

- A licensee must provide indoor and outdoor activities for infants. The licensee shall decide how the infants will be taken to the outdoor activity area safely.

**R9-5-502 (A) (8)**

- A bassinet may not be used for young infants. The rule requires a crib.

**R9-5-502 (A) (8)**

- A portable crib or playpen is acceptable as a crib if the portable crib or playpen meets the requirements in **R9-5-502 (A) (8) (a-c)**.

**R9-5-502 (A) (8) (c)**

- Fitted means to be the proper shape and size. If a crib sheet is a fitted sheet, but not tight fitting on the mattress, the licensee is in violation of this rule.

**R9-5-502 (A) (10) (b)**

- *A cleanable non-porous barrier may be added between cribs to make a closed end. This would enable the licensee to place the cribs end to end.*

**R9-5-502 (C) (3) (a)**

- *A parent must specify what type of food to serve the child according to food groups – vegetable, fruit, meat, or cereal – on the written feeding instruction form.*

**R9-5-502 (C) (5) (b) & (c)**

- *An infant who does not need to be held for feeding must be fed in a high chair or at a table. A licensee may not place a child in an infant swing or bouncy chair to feed the child.*

**R9-5-503. Standards for Diaper Changing**

- A. A licensee shall provide a diaper changing area in each activity area as required in R9-5-602(C) that consists of:
1. A nonabsorbent, sanitizable diaper changing surface that is:
    - a. Seamless and smooth; and
    - b. Kept clear of items not required for diaper changing;
  2. A hand washing sink next to the diaper changing surface for staff use when changing diapers and for washing a child during or after diapering, that provides:
    - a. Running water between 86° F and 110° F,
    - b. Antibacterial soap from a dispenser, and
    - c. Single-use paper hand towels from a dispenser; and
  3. At least two waterproof, sanitizable containers with waterproof liners and tight fitting lids. Separate containers shall be used for soiled diapers and soiled clothing. A licensee shall ensure that:
    - a. The containers are inaccessible to children;
    - b. A staff member:
      - i. Empties clothing soiled with feces into a flush toilet without rinsing;
      - ii. Places clothing soiled by feces or urine in a plastic bag labeled with a child's name, stores the clothing in a container used for this purpose, and sends the clothing home with the child's parent; and
      - iii. Removes disposable diapers and disposable training pants from a diaper changing area as needed or at least twice every 24 hours to a waste receptacle outside the facility building.
- B. A licensee shall ensure that a staff member does not:
1. Permit a bottle, formula, food, eating utensil, or food preparation in a diaper changing area;
  2. Draw water for human consumption from a diaper changing area sink; or
  3. If responsible for food preparation, change diapers until food preparation duties have been completed for the day.
- C. A licensee shall ensure that a written diaper changing procedure is posted and implemented in each diaper changing area. The procedure shall state that a child's diaper shall be changed as soon as it is soiled, and that a staff member, when diapering, shall:
1. Use a separate wash cloth and towel only once for each child;
  2. Wash and dry a child using the child's individual personal products labeled with the child's first and last name;
  3. Use single-use disposable latex gloves;
  4. Wash his or her own hands with antibacterial soap and running water between 86° F and 110° F before and after each diaper change;
  5. Wash each child's hands with antibacterial soap and running water between 86° F and 110° F after each diaper change;
  6. Clean, sanitize, and dry the diaper changing surface following each diaper change; and
  7. Use single-use paper towels from a dispenser to dry the diaper changing surface or the hands of a child or staff member.
- D. A licensee shall ensure that a staff member:
1. Keeps a dated log for each day in each diaper changing area, listing each time the child's diaper has been changed; and
  2. Maintains the diaper changing log on facility premises for three months from the date of the log.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-503 - Standards for Diaper Changing)**

**R9-5-503 (A) (1)**

- *A movable changing table with a molded plastic changing area and sliding cabinet doors is acceptable if the movable changing table meets the requirement in R9-5-503 (A) (1)*

*and the movable changing table is permanently located next to a hand-washing sink in an approved diaper changing area. See also **R9-5-602 & R9-5-607.***

- *A wooden diaper changing surface is sanitizable if the wooden diaper changing surface is thoroughly sealed with a shellac type product that is nonabsorbent. The surveyor may request documentation about the type of product used to seal the wood.*

**R9-5-503 (A) (1) (a)**

- *A changing table that pulls out of a wall, such as a changing table found in public restrooms/airports, etc., may be used in a facility. The surface of the changing table must be smooth, seamless and the changing table must accommodate a child's weight and length.*

**R9-5-503 (A) (2)**

- *A diaper changing hand-washing sink is for hand washing associated with diaper changing only. It may not be used for general hand washing.*

**R9-5-503 (B) (1)**

- *A diaper changing area consists of a diaper changing surface, a hand washing sink, and a container used for soiled diapers and soiled clothing. If the container used for soiled diapers and soiled clothing is in a cabinet, the cabinet is considered part of the diaper changing area.*

**R9-5-503 (C)**

- *The ADA allows latitude to ensure that children's diapering needs are met.*

**R9-5-503 (C) (3)**

- *When changing a child's diaper, two gloves (one on each hand) must be used.*

**R9-5-503 (C) (7)**

- *A paper towel holder does not dispense paper towels individually and is not considered a paper towel dispenser. A paper towel dispenser protects paper towels from contamination because it allows paper towels to be dispensed individually.*

**R9-5-503 (D) (1)**

- *A dated diaper changing log must be kept daily for each child in diapers.*

**R9-5-504. Supplemental Standards for 1-year-old and 2-year-old Children**

In addition to complying with all child care standards, a licensee providing child care services for 1-year-old and 2-year-old children shall:

1. Ensure that a staff member does not permit a 1-year-old or 2-year-old child who is awake to spend more than 30 minutes of consecutive time in a crib, high chair, playpen, or other place of confinement;
2. Consult with each child's parent to develop a mutual plan for individual toilet training of the child and ensure that a staff member does not force toilet training on any child;
3. Ensure that each activity area has a supply of age-appropriate toys, materials, and equipment in a quantity sufficient to meet the needs of the children in attendance.
  - a. Toys, materials, and equipment include:
    - i. Books, including cloth books;
    - ii. Rubber or soft plastic balls;
    - iii. Puzzles and toys to enhance manipulative skills;
    - iv. Blocks;
    - v. Washable soft toys, stuffed animals, and dolls;
    - vi. Musical instruments; and
    - vii. Indoor and outdoor equipment to enhance large muscle development;
  - b. Toys, materials, and equipment are:
    - i. Too large for a child to swallow; and

- ii. Free of sharp edges and points;
4. Ensure that:
  - a. If finger food is served, the food is of a size and texture that does not present a choking hazard;
  - b. A staff member serves food to a child in a high chair or at a table with a chair that allows the child to reach the food while sitting; and
  - c. If a child is fed with a bottle, a staff member complies with the requirements set forth in R9-5-502(C)(4).

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-504 - Supplemental Standards for 1-Year-Old and 2-Year-Old Children)**

**R9-5-504 (4) (b)**

- *Since a child may be served food or drink only while sitting at a table or in a highchair, a bottle or a cup may not be given to the child while the child is on a mat or walking around.*

**R9-5-505. Supplemental Standards for 3-year-old, 4-year-old, and 5-year-old Children**

In addition to complying with all child care standards, a licensee providing child care services for 3-year-old, 4-year-old, and 5-year-old children shall provide a supply of age-appropriate toys, materials, and equipment in each activity area in a quantity sufficient to meet the needs of the children in attendance. Toys, materials, and equipment shall include:

1. Art supplies,
2. Blocks,
3. Books and posters,
4. Toys and dress-up clothes,
5. Indoor and outdoor equipment to enhance large muscle development,
6. Puzzles and toys to enhance manipulative and categorization skills,
7. Science materials, and
8. Musical instruments.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended subsection (F) effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**R9-5-506. Supplemental Standards for School-age Children**

- A. In addition to complying with all child care standards, a licensee providing child care services for school-age children shall:
  1. Unless a child has permission from a parent for self-release from a facility as prescribed in R9-5-306(A)(4), require that a staff member accompany and supervise a child in a school-age program while en route to and from:
    - a. The school attended by the child; or
    - b. The bus stop used by the child. A staff member shall remain with the child at the bus stop until the child boards the bus; and
  2. Require a staff member to supervise a school-age child while en route to and from a bathroom and allow the child privacy while in the bathroom. If a child remains in the bathroom for more than three minutes, the supervising staff member shall check on the child to ensure the child's safety.
- B. A licensee shall separate an indoor activity area for school-age children from an indoor activity area provided for infants or 1-year-old children.
- C. A licensee shall provide age-appropriate toys, materials, and equipment including:
  1. Arts and crafts,
  2. Games,
  3. Puzzles and toys to enhance manipulative skills,
  4. Books,
  5. Science materials,
  6. Sports equipment, and
  7. Outdoor play equipment.
- D. A licensee shall provide school-age children with a quiet study area.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**R9-5-507. Supplemental Standards for Children with Special Needs**

- A. In addition to complying with all child care standards, a licensee providing child care services for a child with special needs shall:
  1. Upon enrollment of a child with special needs, obtain from the child's parent a copy of an existing individualized plan for the child that can be reviewed, adopted, and followed by the licensee when providing child care services to the child. An individualized plan shall include the following as needed for the child:

- a. Medication schedule;
  - b. Nutrition and feeding instructions;
  - c. Qualifications required of a staff member who feeds the child;
  - d. Medical equipment or adaptive devices;
  - e. Medical emergency instructions;
  - f. Toileting and personal hygiene instructions;
  - g. Specific child care services to be provided to the child at the facility;
  - h. Information from health care providers, including the frequency and length of any prescribed medical treatment or therapy;
  - i. Training required of a staff member to care for the child's special needs; and
  - j. Participation in fire evacuation drills.
2. If a child with special needs does not have an existing individualized plan, obtain from the child's parent written instructions for providing services to the child until a written individualized plan containing the information in subsection (A)(1) is developed by a team consisting of staff members, the child's parent, and health care providers. An individualized plan shall be completed within 30 days of the child's enrollment;
  3. Maintain a child's current individualized plan on facility premises and provide a copy to the child's parent; and
  4. Ensure the individualized plan is updated at least every 12 months from the date of the initial plan or as changes occur.
- B. If a child with special needs who is 18 months of age or older and does not walk is placed in an infant group, a licensee may move the child to a 1-year-old group after a parent and the licensee determine that the proposed move is developmentally appropriate.
- C. A licensee shall ensure that a staff member does not prepare formula for tube-feeding a child. All formula for tube-feeding shall be commercially prepackaged in a ready-to-use state or brought by a parent to the facility in an unbreakable container. The feeding and clearing of a child's feeding apparatus shall be performed by a staff member instructed by a parent or individual designated by a parent.
- D. A licensee shall provide a child with special needs with:
1. Developmentally appropriate toys, materials, and equipment; and
  2. Assistance from staff members to enable the child to participate in the activities of the facility.
- E. In addition to complying with the transportation requirements in R9-5-517, a licensee transporting a child with special needs in a wheelchair in a facility's motor vehicle shall ensure that:
1. The child's wheelchair is secured in the motor vehicle using a minimum of four anchorages attached to the motor vehicle floor, and four securement devices, such as straps or webbing that have buckles and fasteners, that attach the wheelchair to the anchorages;
  2. The child is secured in the wheelchair by means of a wheelchair restraint that is a combination of pelvic and upper body belts intended to secure a passenger in a wheelchair; and
  3. The child's wheelchair is placed in a position in the motor vehicle that does not prevent access to the child in the wheelchair or passage to the front and rear in the motor vehicle.
- F. A licensee providing child care services for a child who uses a wheelchair or is not able to walk shall locate the child on the ground floor of the facility.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**R9-5-508. General Nutrition Standards**

- A. A licensee shall make the following meals available:
1. Breakfast to an enrolled child who is present at a facility before 8:00 a.m.,
  2. Lunch to an enrolled child who is present at a facility between 11:00 a.m. and 1:00 p.m., and
  3. Dinner to an enrolled child who is present between 5:00 p.m. and 7:00 p.m. and who will remain at the facility after 7:00 p.m.
- B. A licensee shall serve the following meals or snacks to an enrolled child present at a facility for the following periods of time:
1. If an enrolled child is present two to four hours, one or more snacks. If an enrolled child is present during any of the meal times stated in subsection (A), a meal that meets the meal pattern requirements in subsection (C);
  2. If an enrolled child is present four to eight hours, one or more snacks and a meal;
  3. If an enrolled child is present nine or more hours, two snacks and one or more meals; and
  4. Before bedtime, one snack.
- C. If a licensee provides food, a licensee shall prepare and serve food according to the meal pattern requirements found in Table 1, "Table of Meal Pattern Requirements for Children."
- D. If a parent provides food for the parent's child, the licensee shall provide milk or juice to the child if not provided by the parent.
- E. If a licensee plans and serves meals, the meals shall:
1. Meet the age-appropriate nutritional requirements of a child; and
  2. For each calendar week, provide a variety of foods within each food group from the meal pattern requirements.
- F. A licensee shall maintain at least one day's supply of food needed to serve meals and snacks as required by subsection (C) to each child attending the facility;
- G. In addition to the required daily servings of food stated in subsection (C), a licensee shall make second servings of food available to each child at meals and at snack time.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).



**Guidelines for Compliance (R9-5-508 - General Nutrition Standards)**

**R9-5-508 (A) & (B) (3)**

- *A child present at a child care facility, nine or more hours, must be served two snacks and one or more meals. The two snacks may not be served during the hours designated in R9-5-508 (A) (1-3), for breakfast, lunch, and dinner.*

**R9-5-508 (A) (1)**

- *Breakfast must be available to a child who arrives at a facility before 8:00 a.m. The meal must be a three-component meal.*

**NOTE:** *It is not required for a licensee to provide breakfast to all children, i.e., children who have already eaten breakfast; however it must be available.*

**R9-5-508 (A) (3) & (B) (1)**

- *If a child is in a program that operates from 8:00 to 12:00 and lunch is served at 10:30, a snack is required. A child may bring his/her own snack from home.*
- *If a child attends a facility for less than four hours and the child is present only for a portion of the time frames listed in R9-5-508 (A), the licensee does not have to serve the meal.*

**NOTE:** *For example, a preschool program that is open from 9:00 a.m. until 11:45 a.m. does not have to serve lunch. If a child is not present for more than four hours and the child is not present for the entire time frame mentioned in R9-5-508 (A), only a snack is required.*

- *A program that opens at 6:00 a.m. or earlier and/or a program that stays open later than 6:00 p.m. must serve at least two snacks on their menu.*

**R9-5-508 (C)**

- *If a licensee is serving a complete two-component snack, for example, cheese and crackers, the licensee may serve a drink that is not 100% juice, such as Sunny Delight or Capri Sun. If juice is one of the required components, then the juice must be 100% juice.*

**R9-5-508 (G)**

- *A licensee is required to make second servings of food available to each child; however, the second serving is not required to be the child's favorite food.*

**R9-5-509. General Food Service and Food Handling Standards**

- A. A licensee that prepares or serves food to enrolled children on facility premises shall comply with 9 A.A.C. 8, Article 1 and the local ordinances and requirements of the local health department where the facility is located. If a licensee contracts with a food establishment to prepare and deliver food to the facility, the licensee shall obtain and provide the Department with a copy of the food establishment's permit, issued under 9 A.A.C. 8, Article 1, at the following times:
  1. Before the Department issues a license to the facility,
  2. Upon contracting with the food establishment, and
  3. Every 12 months after the date the contract is entered into while the contract is in effect.
- B. A licensee shall ensure that:
  1. Enrolled children, except infants and special needs children who cannot wash their own hands, wash their hands with soap and running water before handling or eating food;
  2. A staff member:
    - a. Washes with a washcloth the hands of an infant or a special needs child who cannot wash the child's own hands before the infant or special needs child handles or eats food, and
    - b. Uses each washcloth on only one child and only one time before it is laundered or discarded;
  3. An enrolled child is not permitted to eat food directly off the floor, carpet, or ground or with utensils placed directly on the floor, carpet, or ground;
  4. A staff member encourages, but never forces, enrolled children to eat food;
  5. A staff member assists each enrolled child who needs assistance with eating
  6. A staff member teaches self-feeding skills and habits of good nutrition to each child as necessary;
  7. Fresh milk is served directly from the original, commercially filled container, and unused portions of individual servings are not returned to the original container;

8. Reconstituted dry milk is not served to meet the fluid milk requirement;
9. Juice served to children for a meal or snack is full-strength 100% vegetable or 100% fruit juice from an original, commercially filled container or reconstituted from a concentrate according to manufacturer instructions;
10. Each staff member is informed of a modified diet prescribed for an enrolled child by the child's parent or health care provider, and the modified diet is posted in the kitchen and in the child's activity area;
11. The food served to an enrolled child is consistent with a modified diet prescribed for the child by the child's parent or health care provider;
12. An enrolled child is not permitted in the kitchen during food preparation or food service except as part of an activity;
13. Enrolled children do not use the kitchen or a food storage area as a passageway; and
14. A director or staff member:
  - a. Prepares a weekly menu at least one week in advance,
  - b. Includes on the menu the foods to be served on each day,
  - c. Dates each menu,
  - d. Posts each menu at least one day before the first meal on the menu will be served, and
  - e. Writes food substitutions on a posted menu no later than the morning of the day of meal service.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).  
Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3).

**Guidelines for Compliance (R9-5-509 - General Food Service and Food Handling Standards)**

**R9-5-509 (A)**

- *Local ordinances and requirements of the local health department may allow cooking in the classroom as an activity. The local ordinances and health department should be followed to decide how food is prepared, handled, served, and consumed.*

**R9-5-509 (A) (3)**

- *The Department requires proof that a licensee has an eating/drinking permit. The eating/drinking permit is evidence of an approval to provide the catering service.*

**R9-5-509 (B) (14) (b)**

- *A licensee is not required to specify all types of food items on the facility's menu. For example, some food items may be listed in general terms, such as Veg-All, hamburgers, hotdogs, and chicken. The following food items must be specific – cereal, juice, fruit, fruit cocktail, vegetables, trail mix, crackers, muffins, soup, and sandwiches. Ingredients do not need to be itemized.*

**R9-5-510. Discipline and Guidance**

- A. A licensee shall ensure that a staff member:
  1. Defines and maintains consistent, reasonable rules, and limitations for a child's behavior and teaches, models, and encourages orderly conduct, personal control, and age-appropriate behavior;
  2. Explains to a child why a particular behavior is not allowed, suggests an alternative, and assists the child to become engaged in an alternative activity; and
  3. After determining that a child's behavior may result in harm to self or others, holds the child until the child regains control or composure.
- B. A licensee shall ensure that a staff member does not use or permit:
  1. A method of discipline that could cause harm to the health, safety, or welfare of a child;
  2. Corporal punishment;
  3. Discipline associated with:
    - a. Eating, napping, sleeping, or toileting;
    - b. Medication; or
    - c. Mechanical restraint; or
  4. Discipline administered to any child by another child.
- C. A licensee may allow a staff member to separate a child from other children for unacceptable age-appropriate behavior.
  1. The separation period shall be for no longer than three minutes after the child has regained control or composure.
  2. A staff member shall not allow a child to be separated for longer than 10 minutes without the staff member interacting with the child.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-510 - Discipline and Guidance)**

**R9-5-510 (B) (3)**

- *A licensee may not place a child into a high chair or playpen for discipline purposes.*

**R9-5-511. Sleeping Materials and Equipment**

- A. A licensee shall provide each child who naps or sleeps at the facility with a separate cot, mat, or a crib that meets the requirements of R9-5-502(A)(8) and ensure that:
1. A cot, mat, or crib used by a child accommodates the child's height and weight;
  2. A staff member covers each cot, crib mattress, or mat with a clean sheet that is laundered when soiled, or at least once every seven days and before use by a different child;
  3. A clean blanket or sheet is available for each child;
  4. A rug, carpet, blanket, or towel is not used as a mat; and
  5. Each cot, mat, or crib is maintained in a clean and repaired condition.
- B. A licensee shall not use bunk beds or waterbed mattresses.
- C. A licensee shall provide an unobstructed passageway at least 18 inches wide between each row of cots, or mats to allow a staff member access to each child.
- D. A licensee shall ensure that cribs, cots, and mats do not obstruct access to designated exits.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-511 - Sleeping Materials and Equipment)**

**R9-5-511 (A) (5)**

- *A licensee may repair a tear or puncture in a mat by affixing tape securely over the area to allow cleaning and sanitizing.*

**R9-5-512. Cleaning and Sanitation**

- A. A licensee shall maintain facility premises free of insects and vermin.
- B. A licensee shall maintain facility premises and furnishings in a clean condition and free from odor.
1. Floor coverings, such as carpeting, tile, linoleum, or wood shall be clean, washable, and free from cracks, chips, gaps, rips, dampness, or odors.
  2. A licensee shall ensure that toilet bowls, lavatory fixtures, and floors in toilet rooms and kitchens are cleaned and sanitized as often as necessary to maintain them in a clean and sanitized condition or at least once every 24 hours.
- C. If laundry belonging to a facility is done on facility premises, a licensee shall:
1. Not use a kitchen or food storage area for sorting, handling, washing, or drying laundry;
  2. Locate the laundry equipment in an area that is separate from licensed activity areas and inaccessible to enrolled children;
  3. Not permit a child to be in a laundry room or use a laundry area as a passageway for enrolled children; and
  4. Ensure that laundry soiled by vomitus, urine, feces, blood, or other body fluid is stored, cleaned, and sanitized separately from other laundry.
- D. A licensee shall ensure that:
1. Each toilet room in a facility contains, within easy reach of children:
    - a. Mounted toilet tissue;
    - b. A sink with running water;
    - c. Antibacterial soap contained in a dispenser; and
    - d. Disposable, single-use paper towels in a mounted dispenser, or a mechanical air hand dryer;
  2. Staff members wash their hands with antibacterial soap and running water after toileting;
  3. A child's hands are washed with antibacterial soap and running water after toileting;
  4. Food waste is stored in a container with a tight fitting lid.
    - a. The container is clean and lined with a plastic bag.
    - b. Food waste and other refuse is removed from the facility building at least once every 24 hours or more often as necessary to maintain a clean condition and avoid odors; and
  5. A staff member does not draw water for human consumption from a toilet room hand washing sink.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended subsection (P) effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-512 - Cleaning and Sanitation)**

**R9-5-512 (B) (2)**

- *Products other than bleach may be used to sanitize surfaces. "Sanitize" is defined in R9-5-101 (97).*

**R9-5-512 (C) (4)**

- *Any cloth used for burping a child that gets soiled when the child "spits up" needs to be stored, cleaned, and sanitized separately from other laundry. "Spit up" is a body fluid.*

**R9-5-512 (D) (3)**

- *Hand sanitizers may not be used in place of soap and running water for hand washing.*

**R9-5-512 (D) (4)**

- *When children are eating, the lid to a lined waste container is allowed to be off. The food waste that is being thrown away during the meal service is not being "stored." After the children are finished eating and when engaged in other activities, the tight fitting lid needs to be on the container.*

**R9-5-513. Pets and Animals**

- A licensee shall maintain written documentation of current immunization against rabies for each dog or cat owned by a licensee or staff member that is present on facility premises.
- A licensee shall ensure that child care personnel:
  1. Keep all pet and animal habitats clean;
  2. Prohibit reptiles such as turtles, iguanas, snakes, and lizards in the facility;
  3. Prohibit birds in food preparation and eating areas;
  4. Control pets and animals to maintain the cleanliness of the facility and prevent the pets and animals from endangering a child, staff member, or other individual on the premises; and
  5. Keep birds and animals such as horses, sheep, cattle, and poultry in an enclosure that is not accessible to enrolled children except as part of an activity.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-513 - Pets and Animals)**

**R9-5-513 (B) (3-5)**

- *A birdcage may be kept in a director's office or positioned high enough off the ground in a classroom so it is inaccessible to the children. The area around the cage must be kept free of feathers, seeds, etc.*

**R9-5-514. Accident and Emergency Procedures**

- A licensee shall maintain a first aid kit accessible to staff members but inaccessible to children. The kit shall contain first aid supplies in a quantity sufficient to meet the needs of the enrolled children and include the following:
  1. Adhesive band-aids of assorted sizes,
  2. Antiseptic solution or sealed antiseptic wipes,
  3. Sterile bandages,
  4. Sterile gauze pads,
  5. A pair of scissors,
  6. Adhesive tape,
  7. Disposable latex gloves, and

8. Reclosable plastic bags of at least one-gallon size.
- B. A licensee shall prepare a written accident, evacuation, and emergency plan and maintain the plan on facility premises in a location accessible to staff members and update the plan every 12 months from the date of initial preparation or when any information changes. The plan shall contain:
  1. The location of the first aid kit;
  2. The names of staff members who have the first aid training required by R9-5-403(E);
  3. The names of staff members who have the CPR training required by R9-5-403(E);
  4. The directions for verbal notification of a parent by telephone or other equally expeditious means within 30 minutes of an accident or emergency, and directions for written notification to the parent within 24 hours; and
  5. The facility's street address and the emergency telephone numbers for the local fire department, police department, ambulance service, and poison control center.
- C. A licensee shall post, near an activity area or a room's designated exit, a building evacuation plan that details the designated exits from the activity area or room and the facility.
- D. A licensee shall maintain a communication system that consists of:
  1. A direct-access, in-and-out, operating telephone service on the facility; or
  2. A two-way voice communication system that connects the facility with an individual who has direct access to an in-and-out, operating telephone service.
- E. A licensee shall post the accident, evacuation, and emergency plan required in subsection (B) in any facility activity area that does not have an operable telephone service or two-way voice communication system.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-514 - Accident and Emergency Procedures)**

**R9-5-514 (A)**

- *Commercially prepared first aid kits are acceptable, but should be checked to ensure they do not contain any over-the-counter medications.*

**R9-5-514 (A) (2)**

- *Hydrogen peroxide is an antiseptic solution and is acceptable.*

**R9-5-514 (B) (4)**

- *The directions for the verbal notification of a parent must be specific enough so a staff member knows how to contact a parent in case of an emergency.*

**R9-5-514 (B) (5)**

- *911 is acceptable as the emergency phone number for the local fire department, police department, and ambulance service.*

**R9-5-514 (D) (1)**

- *A licensee may not use an answering machine for incoming calls and then return the calls later.*

**NOTE:** *This requirement does not apply to voice message systems that are activated when all the licensee's telephone lines are busy.*

**R9-5-515. Illness and Infestation**

- A. A licensee shall not permit a child to remain at the facility if a staff member determines that a child shows signs of illness or infestation.
- B. If a child exhibits signs of illness or infestation at a facility, a licensee shall ensure that a staff member:
  1. Immediately separates the child from other children,
  2. Immediately notifies the child's parent by telephone or other expeditious means to arrange for the child's removal from the facility, and
  3. Keeps a written record of notification on facility premises for three months from the date of notification.
- C. A licensee shall ensure that a staff member who has signs of illness or infestation is excluded from a facility. A facility director shall not permit a staff member to return to a facility until free from signs of illness or infestation, or until the staff member provides written documentation by a health care provider that the individual may return to a facility.

- D. If a staff member or enrolled child contracts a communicable disease or infestation as stated in A.A.C. R9-6-202(C), a licensee shall ensure that, within 24 hours of notice of the communicable disease or infestation, written notice is provided to each staff member, parent, and the local health department. A licensee shall ensure that:
1. A dated, written notice of the communicable disease or infestation is prepared and posted in the facility's entrance as required by R9-5-303;
  2. A written record of the notification is maintained on facility premises for 12 months from the date of notification; and
  3. A written record of the absences of staff members and children due to a communicable disease or infestation stated in A.A.C. R9-6-202(C) is prepared and maintained on facility premises for 12 months from the first date of absence.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-515 - Illness and Infestation)**

**R9-5-515 (A)**

- *If a child brings a note from a doctor stating the child may return to a facility after an illness, and the child continues to show signs of the illness, the child is allowed to return to the facility based on the doctor's written statement.*
- *A child with green mucous discharge should not automatically be excluded from a facility. The color of the mucous may be a result of factors not related to an illness. A staff member should call a parent or guardian of the child to discuss the reason for the mucous discharge and document the date, time, and content of the telephone call.*

**R9-5-515 (B) (1)**

- *A child showing signs of illness or infestation may be separated from other children and still be in the same room as the other children. An area within a room, such as a reading or music area, may be used to separate the ill child as long as other children are not using that area.*

**R9-5-515 (D)**

- *When a communicable disease is present at a facility, a written notice is required to be posted at the facility within 24 hours.*
- *If a parent of a child authorizes a licensee to sign the child in and out of the facility (**R9-5-306**), the licensee must provide written notice to the child's parent of a communicable disease contracted by children at the facility.*

**R9-5-516. Medications**

- A. A licensee shall ensure that a written statement is prepared and maintained on facility premises that specifies whether prescription or nonprescription medications are administered to enrolled children. If prescription or nonprescription medications are administered, the written statement shall contain provisions explaining that:
1. A facility director, or a staff member designated in writing by the facility director, is responsible for the administration of all medications in the facility, including storing, supervising an enrolled child's ingestion of a medication, and recording all medications administered to an enrolled child. A facility director shall ensure that only one staff member in the facility at any given time is responsible for the administration of medications;
  2. A facility director, or a staff member designated in writing by the facility director, shall not permit the administration of a medication to an enrolled child unless the facility receives written authorization signed by the enrolled child's parent or health care provider that includes the:
    - a. First and last name of the enrolled child;
    - b. Name of the medication;
    - c. Prescription number, if any;
    - d. Instructions for administration specifying the:
      - i. Dosage and route of administration;
      - ii. If indicated, starting and ending dates of the dosage period; and
      - iii. Times and frequency of administration;
    - e. Reason for the medication; and
    - f. Date of authorization; and
  3. A staff member shall:

- a. Administer a prescription medication provided by a parent only from a container dispensed by a pharmacy;
  - b. Administer a nonprescription medication provided by a parent for an enrolled child only from a container prepackaged and labeled for use by the manufacturer and labeled with the enrolled child's name; and
  - c. Not administer any medication that has been transferred from one container to another.
- B. A licensee shall allow an enrolled child to receive an injection only after obtaining a written authorization from a physician. A licensee shall maintain the physician's written injection authorization on facility premises for 12 months from the date of the authorization.
- C. A health care provider authorized by state law to give injections may give an injection to an enrolled child. In an emergency, an individual may give an injection to an enrolled child according to A.R.S. §§ 32-1421(A)(1) and 32-1631(2).
- D. A licensee shall maintain a written record of all medications administered to an enrolled child.
  1. The record shall contain:
    - a. The first and last name of the enrolled child;
    - b. The name and amount of medication administered and the prescription number, if any;
    - c. The date and time the medication was administered; and
    - d. The signature of the staff member who administered the medication to the enrolled child.
  2. A licensee shall maintain the record on facility premises for 12 months from the date the medication is administered.
- E. A licensee shall return all unused prescription and nonprescription medications to a parent when the medication prescription date has expired or the medication is no longer being administered to the enrolled child or dispose of the medication if unable to locate the enrolled child's parent after the child's disenrollment.
- F. A licensee shall ensure that prescription and nonprescription medications are stored as follows:
  1. An enrolled child's medication is kept in a locked, leakproof storage cabinet or container that is used only for storing enrolled children's medications and is located out of reach of children;
  2. Medication for a staff member is kept in a locked, leakproof storage cabinet or container that is separate from the storage container for enrolled children's medications and is located out of reach of children; and
  3. Medications requiring refrigeration are kept in a locked, leakproof container in a refrigerator.
- G. A licensee shall ensure that a facility does not stock a supply of medications for administration to enrolled children, including:
  1. Any prescription medication; or
  2. A nonprescription medication such as aspirin, acetaminophen, ibuprofen, or cough syrup.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

Amended by final rulemaking at 6 A.A.R. 3476, effective August 17, 2000 (Supp. 00-3).

**Guidelines for Compliance (R9-5-516 - Medications)**

**R9-5-516 (A)**

- *The director may designate only one staff member to administer medication in the facility at any given time. A chain of command consisting of several staff members may be set up by the director in order to cover all shifts, absences of staff, etc., but only one staff member may be designated to administer medication in the facility at any given time.*

**R9-5-516 (A) (2-3)**

- *If a parent brings in an over the counter medication for a child younger than two years old and the medication has a warning label not to administer the medication to a child under two years of age without consulting a physician, the medication may not be administered without a physician's authorization, regardless of the parent's permission.*

**R9-5-517. Transportation**

- A. A licensee who transports an enrolled child in a motor vehicle that the licensee owns, or acquires for use by contract, shall:
  1. Ensure that the motor vehicle is registered by the Arizona Department of Transportation as required by A.R.S. § 28-2051 et seq.;
  2. Ensure that the motor vehicle has current insurance coverage, as required by A.R.S. § 28-4131 et seq., and maintain documentation of the current motor vehicle insurance coverage on the facility premises and inside the motor vehicle;
  3. Contact the Department no later than 24 hours after a motor vehicle accident that occurs while transporting an enrolled child;
  4. Submit a written report to the Department within seven days after a motor vehicle accident that occurs while transporting an enrolled child;
  5. Not permit an enrolled child to be transported in a truck bed, camper, or trailer attached to a motor vehicle;
  6. Use a child passenger restraint system, as required by A.R.S. § 28-907, for each child who is younger than 5 years old;
  7. Use an adjustable lap belt or an integrated lap and shoulder belt for each child who is five years old or older;
  8. Ensure that a motor vehicle has:

- a. A working mechanical heating system capable of maintaining a temperature throughout the motor vehicle of at least 60° F when outside air temperatures are below 60° F,
  - b. A working air-conditioning system capable of maintaining a temperature throughout the motor vehicle at or below 86° F when outside air temperatures are above 86° F,
  - c. A first aid kit that meets the requirements of R9-5-514(A),
  - d. Two towels or blankets, and
  - e. Sufficient drinking water to meet the needs of each enrolled child in the motor vehicle and sufficient cups or other drinking receptacles so that each individual in the motor vehicle can drink from a different cup or receptacle;
9. Ensure that the motor vehicle is maintained in a clean condition;
  10. Ensure that the motor vehicle is maintained in a mechanically safe condition; and
  11. Maintain the service and repair records of the motor vehicle as follows:
    - a. A person operating a single child care facility shall maintain the service and repair records for at least 12 months after the date of an inspection or repair in a single location on facility premises;
    - b. A public or private school that uses a school bus, as defined in A.R.S. § 28-101, shall maintain the service and repair records for the school bus as provided in A.A.C. R17-9-108(F); and
    - c. A school governing board, charter school, or person operating multiple child care facilities shall maintain the service and repair records for any motor vehicle other than a school bus for at least 12 months after the date of an inspection or repair in a single administrative office located in the same city, town, or school attendance area as the facility.
- B. A licensee shall ensure that an individual who drives a motor vehicle used to transport an enrolled child:
1. Is 18 years of age or older;
  2. Holds a valid driver's license issued by the Arizona Department of Motor Vehicles as prescribed by A.R.S. § 28-3151 et seq.;
  3. Carries in the motor vehicle a list stating the name of each enrolled child being transported and a copy of each child's Emergency, Information, and Immunization Record card;
  4. Requires that each door be locked before the motor vehicle is set in motion and keeps the doors locked while the motor vehicle is in motion;
  5. Requires that each enrolled child remain seated and entirely inside the motor vehicle while the motor vehicle is in motion;
  6. Requires that each enrolled child be secured in a seat belt before the motor vehicle is set in motion and while the motor vehicle is in motion;
  7. Does not permit an enrolled child in the motor vehicle to open or close a door or window;
  8. Sets the emergency parking brake and removes the ignition keys from the motor vehicle before exiting the motor vehicle;
  9. Ensures that each enrolled child is loaded into or unloaded from the motor vehicle away from moving traffic at curbside or in a driveway, parking lot, or other location designated for this purpose; and
  10. Does not use audio headphones or a telephone while the motor vehicle is in motion.
- C. When transporting an enrolled school-age child in a motor vehicle, a licensee shall ensure that the staff-to-children ratios required in R9-5-404(A) are met. A motor vehicle driver may be counted in the staff-to-children ratio, when transporting an enrolled school-age child in a motor vehicle, if the motor vehicle driver meets the qualifications of a teacher-caregiver.
- D. When transporting an enrolled child who is not school-age in a motor vehicle, a licensee shall ensure that the staff-to-children ratios required in R9-5-404(A) are met. A motor vehicle driver may be counted in the staff-to-children ratio, when transporting an enrolled child who is not school-age in a motor vehicle, only if four or fewer children are being transported and the motor vehicle driver meets the qualifications of a teacher-caregiver.
- E. A licensee who is transporting an enrolled child in a commercial vehicle, as defined in A.R.S. § 28-1301, is exempt from the provisions in subsections (A)(7), (A)(8)(b), and (B)(6).
- F. A licensee who is transporting an enrolled child in a school bus, as defined in A.R.S. § 28-101, is exempt from the provision in subsection (A)(8)(c) and shall comply with A.A.C. R17-9-110.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 13 A.A.R. 1086, effective May 5, 2007 (Supp. 07-1).

**Guidelines for Compliance (R9-5-517 - Transportation)**

***R9-5-517 (A) (8) (c), (d) & (e)***

- *A licensee must ensure that a motor vehicle used to transport children is equipped with water, a first aid kit, and two towels or blankets. The water, first aid kit, and two towels or blankets may be stored in a facility, but must be placed in a motor vehicle before the children are transported in the motor vehicle.*

**R9-5-518. Field Trips**

- A. A licensee providing a field trip for a child shall:
1. Obtain written permission from a parent before a child participates in a field trip. A field trip permission slip shall include:
    - a. The date and purpose of the field trip;
    - b. The times of departure from and return to the facility; and



- c. The name, street address, and telephone number, if any, of the field trip destination;
  2. Prepare a written field trip plan that is maintained on facility premises and includes the following:
    - a. The name of each participating child, staff member, and other individuals on the field trip;
    - b. The times of departure from and return to the facility;
    - c. The license plate number of any motor vehicle used on the field trip; and
    - d. The name, street address, and telephone number, if any, of the field trip destination; and
  3. Maintain the field trip permission forms and field trip plan on facility premises for three months from the date of a field trip.
- B. A licensee shall ensure that a staff member taking enrolled children on a field trip carries the following on the trip:
1. A copy of the Emergency, Information, and Immunization Record card of each child participating in the field trip;
  2. A list stating the name of each participating child. A staff member shall ensure that each child on the list is present at all times and place a checkmark next to the name of each child present at the following times:
    - a. At the beginning of the field trip or when boarding the motor vehicle,
    - b. Upon arrival and each hour while at the field trip destination,
    - c. When preparing to leave the field trip destination or when boarding the motor vehicle to return to the facility, and
    - d. When reentering the facility at the conclusion of the field trip; and
  3. Water in an amount sufficient for each participating child during the field trip.
- C. A licensee shall ensure that each child participating in a field trip is wearing in plain view a written identification stating the facility's name, address, and telephone number. A licensee shall also ensure that each child is wearing out of view a written identification stating the child's first and last names.
- D. If a licensee uses a motor vehicle volunteered by a parent or other individual for a field trip, a licensee shall determine before the field trip begins that the motor vehicle is in compliance with R9-5-517(A)(1) and (2) and that the motor vehicle driver is in compliance with R9-5-517(B)(1) and (2).

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-518 - Field Trips)**

***R9-5-518 (A) (1)***

- *A licensee may obtain permission from a parent for more than one field trip by having the parent sign one form with several field trips listed on the form. All the information required in R9-5-518 (A) (1), must be on a form for each field trip.*

**R9-5-519. Repealed**

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended subsection (F) effective July 7, 1988 (Supp. 88-3). Repealed effective October 17, 1997 (Supp. 97-4).

**R9-5-520. Repealed**

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Repealed effective October 17, 1997 (Supp. 97-4).

**R9-5-521. Repealed**

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended by adding subsection (C) effective July 7, 1988 (Supp. 88-3). Repealed effective October 17, 1997 (Supp. 97-4).

**R9-5-522. Repealed**

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended paragraph (1), subparagraph (e) effective July 7, 1988 (Supp. 88-3). Repealed effective October 17, 1997 (Supp. 97-4).

**Table 1. Meal Pattern Requirements for Children**

TABLE OF MEAL PATTERN REQUIREMENTS FOR CHILDREN			
Food Components	Ages 1 through 2 years	Ages 3 through 5 years	Ages 6 and Older
<b>Breakfast:</b> 1. Milk, fluid 2. Vegetable, fruit, or full-strength juice 3. Bread and bread alternates (whole grain or enriched); Bread or cornbread, rolls, muffins, or biscuits or cold dry cereal (volume or weight, whichever is less) or cooked cereal, pasta, noodle products, or cereal grains	1/2 cup 1/4 cup 1/2 slice 1/2 serving 1/4 cup or 1/3 oz. 1/4 cup	3/4 cup 1/2 cup 1/2 slice 1/2 serving 1/3 cup or 1/2 oz. 1/4 cup	1 cup 1/2 cup 1 slice 1 serving 3/4 cup or 1 oz. 1/2 cup
<b>Lunch or Supper:</b> 1. Milk, fluid 2. Vegetable and/or fruit (2 or more kinds) 3. Bread and bread alternates (whole grain or enriched); Bread or cornbread, rolls, muffins, or biscuits or cooked cereal, pasta, noodle products, or cereal grains 4. Meat or meat alternates: Lean meat, fish, or poultry (edible portion as served) or cheese or egg or cooked dry beans or peas* or peanut butter, soy nut butter or other nut or seed butters or peanuts, soy nuts, tree nuts, or seeds or an equivalent quantity of any combination of the above meat/meat alternates	1/2 cup 1/4 cup total 1/2 slice 1/2 serving 1/4 cup 1 oz. 1 oz. 1 egg 1/4 cup 1 tbsp** 1/2 oz.**	3/4 cup 1/2 cup total 1/2 slice 1/2 serving 1/4 cup 1 1/2 oz. 1 1/2 oz. 1 egg 3/8 cup 1 1/2 tbsp** 3/4 oz.**	1 cup 3/4 cup total 1 slice 1 serving 1/2 cup 2 oz. 2 oz. 1 egg 1/2 cup 2 tbsp** 1 oz.**
<b>Snack: (select 2 of these 4 components)***</b> 1. Milk, fluid 2. Vegetable, fruit, or full-strength juice 3. Bread and bread alternates (whole grain or enriched); Bread or cornbread, rolls, muffins, or biscuits or cold dry cereal (volume or weight, whichever is less) or cooked cereal, pasta, noodle products, or cereal grains 4. Meat or meat alternates: Lean meat, fish, or poultry (edible portion as served) or cheese or egg or yogurt or cooked dry beans or peas* or peanut butter, soy nut butter or other nut or seed butters or peanuts, soy nuts, tree nuts, or seeds or an equivalent quantity of any combination of the above meat/meat alternates	1/2 cup 1/2 cup 1/2 slice 1/2 serving 1/3 cup or 1/2 oz. 1/4 cup 1/2 oz. 1/2 oz. 1/2 egg or 1/4 c 1/8 cup 1 tbsp 1/2 oz.	1/2 cup 1/2 cup 1/2 slice 1/2 serving 1/3 cup or 1/2 oz. 1/4 cup 1/2 oz. 1/2 oz. 1/2 egg or 1/4 c 1/8 cup 1 tbsp 1/2 oz.	1 cup 3/4 cup 1 slice 1 serving 3/4 cup or 1 oz. 1/2 cup 1 oz. 1 oz. 1 egg or 1/2 c 1/4 cup 2 tbsp 1 oz.
* In the same meal service, dried beans, or dried peas may be used as a meat alternate or as a vegetable; however, such use does not satisfy the requirement for both components. ** At lunch and supper, no more than 50% of the requirement shall be met with nuts, seeds, or nut butters. Nuts, seeds, or nut butters shall be combined with another meat/meat alternative to fulfill the requirement. Two tablespoons of nut butter or 1 ounce of nuts or seeds equals 1 ounce of meat. *** Juice may not be served when milk is served as the only other component.			

**Historical Note**

Table 1 adopted effective October 17, 1997 (Supp. 97-4).

**ARTICLE 6. PHYSICAL PLANT OF A FACILITY**

**R9-5-601. General Physical Plant Standards**

- A. A facility licensed or a licensed facility modified after the effective date of these rules shall conform to the following:
1. Local building and fire codes,
  2. Local zoning requirements, and
  3. The requirements of A.R.S. § 36-881 et seq. and these rules.
- B. A facility licensed before the effective date of these rules shall meet the requirements of the local building and fire codes in existence on the date of licensing and any locally required amendments to the building and fire codes.
- C. A facility shall not be located in a manufactured home as defined in A.R.S. § 41-2142(24) or a mobile home as defined in A.R.S. § 41-2142(26).

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-601 - General Physical Plant Standards)**

**R9-5-601 (B)**

- *A facility licensed by the effective date of these rules, with a fire alarm system, must be in compliance with all local fire codes, and amendments to the local fire codes, on the date of licensing.*

**R9-5-602. Supplemental Physical Plant Standards**

In addition to complying with the general physical plant standards, a licensee shall comply with the following supplemental physical plant requirements:

- A. When a facility is licensed to care for more than five infants in an infant room as described in R9-5-502(A)(1), each infant room shall have two or more designated exits from the room.
- B. Excluding infants and children who use diapers from ratio calculations, toilets, and hand washing sinks accessible to children shall be provided in a facility as follows:
1. At least one flush toilet and one hand washing sink for 10 or fewer children,
  2. At least two flush toilets and two hand washing sinks for 11 to 25 children, and
  3. At least one flush toilet and one hand washing sink for each additional 20 children.
- C. A licensee providing child care services for infants or children who require diapering shall provide a diaper changing area that meets the requirements in R9-5-503 in each infant room or activity area used by an infant or a child who wears diapers or disposable training pants. An applicant or licensee requiring a diaper changing area outside an infant room or activity area to allow privacy for diapering a child with special needs may submit a written request for an approval, and:
1. For an initial application, submit physical plant documents required by R9-5-607 that designate the location of the proposed diaper changing area. The Department shall review the proposed diaper changing area and provide written notice according to the procedures in R9-5-202;
  2. For a licensed facility, submit a drawing of the proposed diaper changing area to the Department before installing the diaper changing area. Within 30 days from the date of the receipt of the request the Department shall send written notice to the licensee of approval or disapproval. If the proposed diaper changing area:
    - a. Complies with A.R.S. § 36-881 et seq. and these rules and provides privacy for the child with special needs, the Department shall approve the proposed diaper changing area; or
    - b. Does not comply with A.R.S. § 36-881 et seq. or these rules or provide privacy for the child with special needs, the Department shall provide the licensee with the requirements necessary for the Department to approve the requested change; and
  3. A licensee shall not use a diaper changing area located outside of an activity area until the Department approves the diaper changing area.
- D. A licensee shall ensure that a glass mirror, window, or other glass surface that is located within 36 inches of the floor is made of safety glass that has been manufactured, fabricated, or treated to prevent the glass from shattering or flying when struck or broken, or is shielded by a barrier to prevent impact by or injury to a child.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-602 - Supplemental Physical Plant Standards)**

**R9-5-602 (B)**

- *A classroom sink may be used by a child to wash the child's hands after an art activity, brush the child's teeth, or get a drink from an attached drinking fountain, but the sink may not be counted as part of a sanitary unit.*

**NOTE:** A "sanitary unit" consists of a flush toilet and a hand-washing sink.

**R9-5-602 (B) (1)**

- *A urinal is counted as a "flush toilet" for the purpose of calculating sanitary units.*

**R9-5-602 (C)**

- *A child who wears diapers while inside a facility must remain in an activity area that has an approved diaper changing area. A dining room or cafeteria is not considered an activity area for diaper changing purposes.*

**R9-5-603. Facility Square Footage Requirements**

- A. A licensee shall ensure that the facility meets the following square footage requirements for indoor activity areas based on the classifications of child care services:
1. At least 35 square feet of indoor activity space for each infant and 1-year-old child;
  2. At least 25 square feet of indoor activity space for each child who is not an infant or 1-year-old child; and
  3. When 1-year-old children are grouped together with children older than 1-year-old children in the same activity area, at least 35 square feet of indoor activity space for each child.
- B. When computing indoor activity space for subsections (A)(1) through (3) to determine licensed capacity, the floor space occupied by the following shall be excluded:
1. The interior walls;
  2. A kitchen, bathroom, closet, hallway, stair, entryway, office, a room designated for isolating a child from other children, storage rooms, and a room designated for the sole use of child care personnel; and
  3. Room space occupied by teacher-caregiver desks, file cabinets, storage cabinets, and hand washing sinks for staff use.
- C. A licensee shall provide at least 75 square feet of outdoor activity area for each child occupying the outdoor activity area at any time. To allow scheduled access to an outdoor activity area for each attending child, a licensee shall provide at least 75 square feet of outdoor activity area per child for at least 50% of the facility's licensed capacity.
1. An applicant or licensee may request an exemption from this requirement if:
    - a. No enrolled child attends the facility for more than four hours per day;
    - b. The applicant or licensee provides at least 50 square feet of indoor activity area for each child based on the facility's licensed capacity; and
    - c. The applicant or licensee submits a written request for exemption in the narrative portion of the information form.
  2. An applicant or licensee may request a substitution of indoor activity area for outdoor activity area if:
    - a. The applicant or licensee can provide at least 50% of the outdoor activity area required by this subsection;
    - b. The indoor activity area being substituted for outdoor activity area is in addition to the indoor activity area required in subsection (A); and
    - c. The applicant or licensee submits a written request to substitute indoor activity area for outdoor activity area in the narrative portion of the information form and identifies on the floor plan the specific location of the indoor activity area being substituted for outdoor activity area.
  3. The Department shall review and approve or deny the request for exemption or substitution.
    - a. For a request that is part of an initial application, the Department shall review the proposed exemption or substitution and provide written notice according to the procedures in R9-5-202.
    - b. For a licensed facility, within 30 days from the date of the receipt of the request, the Department shall review the proposed exemption or substitution and provide written notice of the review to the licensee. If the proposed exemption or substitution:
      - i. Complies with A.R.S. § 36-881 et seq. and these rules, the Department shall approve the proposed exemption or substitution; or
      - ii. Does not comply with A.R.S. § 36-881 et seq. or these rules, the Department shall provide the licensee with the requirements necessary to approve the requested exemption or substitution.
    - c. A licensee shall provide at least 75 square feet of outdoor activity area per child for 50% of the facility's license, until the Department approves the exemption or substitution.
  4. A licensee shall provide at least 75 square feet of indoor activity area that is substituted for outdoor activity area for each child occupying the activity area.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-603 - Facility Square Footage Requirements)**

**R9-5-603 (A)**

- *An area must be licensed in order for children to be present in the area.*

**R9-5-603 (A) (2)**

- *When the original plans show one large room for one and two year old children, the licensee may not divide the room and change capacity without Departmental approval. **NOTE:** See also **R9-5-607 (A)***
- *If a special program, such as a puppet show, is scheduled at a facility, the number of children in the room participating in the program may not exceed the room's capacity.  
A lunchroom's capacity may not be exceeded when children are present in the room.*

**R9-5-604. Outdoor Activity Areas**

- A. A licensee shall provide an outdoor activity area on facility premises.
  1. A licensee shall not permit a child to cross a driveway or parking lot to access an outdoor activity area on the facility premises or a school campus unless the licensee obtains written approval from the Department.
  2. If a licensee requests approval from the Department for enrolled children to cross a driveway or parking lot to access an outdoor activity area, the Department shall inspect the facility premises or school campus to determine whether the health, safety, or welfare of enrolled children would be endangered. The Department shall notify the licensee of approval or disapproval within 30 days of receipt of the request. If disapproved, the Department shall provide the licensee with the requirements necessary to approve the proposed crossing.
- B. Except as provided in subsection (C), a licensee shall ensure that an outdoor activity area:
  1. Is enclosed by a fence:
    - a. A minimum of 4 feet high;
    - b. Secured to the ground; and
    - c. With either vertical or horizontal open spaces on a fence or gate that do not exceed 4.0 inches;
  2. Is maintained free of hazards; and
  3. Has gates that are kept closed while a child is in the outdoor activity area.
- C. A licensee shall ensure that a playground used only for school age children at a facility operating at a public or private school meets the fencing requirements of the public or private school. If the Department determines by inspection that a facility fence on a public or private school does not ensure the health, safety, or welfare of enrolled children, the licensee shall meet the fencing requirements of subsection (B).
- D. A licensee shall ensure that the following is provided and maintained under swings and climbing equipment in an outdoor activity area:
  1. A shock-absorbing rubber unitary surfacing material manufactured for such use in outdoor activity areas; or
  2. A minimum depth of 6 inches of a nonhazardous, resilient material such as fine loose sand or wood chips.
- E. A licensee shall ensure that hard surfacing material such as asphalt or concrete is not installed or used under swings or climbing equipment unless used as a base for a rubber surfacing.
- F. A licensee shall provide a shaded area for each child occupying an outdoor activity area at any time of day.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-604 - Outdoor Activity Areas)**

**R9-5-604 (D) (1) (2)**

- *A mat that is shock absorbent and honeycombed may be used as specified in a manufacturer's specifications of the mat's resiliency.*
- *Grass may not be used under swings and climbing equipment to meet the six inches of resilient surface.*

**R9-5-604 (E)**

- *If a licensee is using an asphalt parking lot for an outdoor activity area, wood chips may not be placed on top of the asphalt to provide a resilient surface under swings or climbing equipment.*

**R9-5-605. Swimming Pools**

- A. If a licensee uses a public or semi-public swimming pool for enrolled children, the swimming pool shall meet the requirements of the swimming pool ordinance enacted by local government. If no ordinance has been adopted, the swimming pool, shall meet the requirements in A.A.C. R9-8-811 through R9-8-852.
- B. A licensee that uses a private pool for enrolled children shall ensure that the swimming pool and its equipment meet the following requirements:
  1. If a licensee uses a private pool that is a minimum of 2 feet in depth for enrolled children, the swimming pool shall meet the requirements of the swimming pool ordinance enacted by local government and, at a minimum, be equipped with the following:
    - a. A recirculation system consisting of piping, pumps, filters, and water conditioning and disinfecting equipment that conforms to the swimming pool manufacturer's specifications for installation and operation, and is adequate to clarify and disinfect the pool water continuously;
    - b. Two swimming pool inlets located on opposite sides of the swimming pool to produce uniform circulation of water and maintain uniform chlorine residual throughout the entire swimming pool without the existence of dead spots;
    - c. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed by bathers;
    - d. A swimming pool water vacuum system in operating condition;
    - e. A removable strainer to prevent hair, lint, or other objects from reaching the pump and filter;
    - f. An automatic mechanical water disinfectant system in use and in operating condition. The disinfecting agents shall maintain the swimming pool water as follows:
      - i. A free chlorine level between 1.0 and 5.0 parts per million as tested by the diethyl-p-phenylene diamine method or .4 to 1.0 parts per million when tested by the orthotolidine method;
      - ii. A pH level between 7.0 and 8.0 as tested by the diethyl-p-phenylene diamine method or the orthotolidine method; or
      - iii. A bromine level between 2.0 and 4.0 parts per million as tested by the diethyl-p-phenylene diamine method;
    - g. A shepherd's crook; and
    - h. A ring buoy attached to a 1/2 inch diameter rope at least 25 feet in length.
  2. If a licensee uses a private pool that is less than 2 feet in depth for enrolled children, the swimming pool shall meet the requirements of subsection (B)(1) except that:
    - a. The swimming pool shall have a minimum of one swimming pool inlet;
    - b. The swimming pool is not required to have a bottom drain;
    - c. A pool water vacuum cleaning system is not required;
    - d. A ring buoy with attached rope is not required; and
  3. A portable pool that does not meet the requirements of subsection (B)(1) or (2) is prohibited.
  4. A licensee may add liquid or dissolved dry chemical disinfectants directly to a pool only for shock purposes.
  5. A licensee shall maintain a dated, written, daily swimming pool log at the swimming pool site that records the free chlorine, pH ranges and bromine readings, including any actions taken by the licensee to restore the swimming pool chemical ranges required by subsection (B)(1)(f) when out-of-range readings occur. A licensee shall maintain a current swimming pool log on facility premises while the swimming pool for three months from the date of use.
- C. A licensee that uses a public, semi-public, or private pool for enrolled children shall use only a swimming pool that is enclosed by a wall, fence, or barrier that meets the requirements of a swimming pool barrier ordinance adopted by the local government where the facility is located. If no ordinance has been adopted, the swimming pool shall be enclosed by a wall, fence, or other barrier that meets the requirements of A.R.S. § 36-1681.
- D. A licensee that uses any semi-public or private swimming pool for enrolled children shall ensure that the swimming pool has been inspected by the Department or a city or county health department before it is used by enrolled children. If a licensee operates or uses a swimming pool that is inspected by a city or county health department, the licensee shall provide the Department with a current written report of the swimming pool inspection. A licensee shall maintain the current swimming pool inspection reports of a swimming pool used by enrolled children on the facility premises.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Former Section R9-5-605 repealed and a new Section R9-5-605 adopted effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**R9-5-606. Fire and Safety**

A licensee shall install portable, pressurized fire extinguishers that meet, at a minimum, a 2A-10-BC rating of the Underwriters Laboratories as described in Publication 10 of the National Fire Code, incorporated by reference in A.A.C. R9-1-412. The fire extinguishers shall be installed and maintained in a facility's kitchen and other locations as required by Standard 10-1 of the Uniform Fire Code, incorporated by reference in A.A.C. R9-1-412.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended subsection (A) effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for compliance (R9-5-606 Fire and Safety)**

**R9-5-606**

- *A local fire department or the State Fire Marshal determines the placement of fire extinguishers in a facility. The Department may refer the licensee to the State Fire Marshal or the local fire department for fire extinguisher placement.*

**R9-5-607. Required Physical Plant Documents**

- A. When applying for a license or making a modification to an existing licensed facility, an applicant shall submit to the Department an information form signed by the applicant or licensee containing:
1. The name of applicant;
  2. The name, address, and telephone number of facility;
  3. The name, address, and telephone number of individual to be contacted if additional information is needed by the Department;
  4. The classifications of child care services being requested;
  5. The action being requested by the applicant;
  6. A brief narrative description of the facility or proposed modification, including the location and assigned age groups of each room in which activities are or will be conducted; and
  7. The date the form is submitted to the Department.
- B. In addition to the information required by subsection (A), an applicant providing child care services in a facility not located in a public school shall submit to the Department one set of final construction drawings including:
1. A site plan drawn to scale showing:
    - a. The drawing scale;
    - b. The boundary dimensions of the property upon which the physical plant is located;
    - c. If more than one building is used for the facility, location, and perimeter dimensions of each building;
    - d. The location of each driveway on the property;
    - e. The location and boundary dimensions of each parking lot on the property;
    - f. The location and perimeter dimensions of each outdoor activity area;
    - g. The location, type and height of each fence and gate; and
    - h. If applicable, the location of swimming pool.
  2. A floor plan drawn to scale showing:
    - a. The drawing scale;
    - b. The length and width dimensions of each activity area used for child care services;
    - c. The width of each doorway;
    - d. The direction of each door's swing;
    - e. The location of each plumbing fixture, including each hand washing, utility, and three compartment sink, toilet, urinal, diaper changing area, and drinking fountain; and
    - f. The location and type of fire alarm system.
  3. A cross section of the physical plant of the facility showing:
    - a. Type of construction; and
    - b. Materials used in construction.
  4. If the physical plant of a facility is larger than 3,000 square feet and is occupied by more than 20 enrolled children and staff members, the seals of an architect, structural engineer, mechanical engineer, and electrical engineer registered as prescribed in A.R.S. § 32-101 et seq., verifying compliance with local building and fire codes, local zoning requirements, and the requirements of these rules.
  5. If the physical plant of a facility is less than 3,000 square feet and is occupied by less than 20 enrolled children and staff members, a copy of all building or zoning permits or certificate of occupancy issued by the local government to the facility.
- C. In addition to the information required by subsection (A)(1), an applicant, providing child care services for children up to school age at a public school, shall submit to the Department one set of final construction drawings or one school map including:
1. A site plan drawn to scale showing:
    - a. The location of each building on the school campus;
    - b. The location of each activity area to be used for child care services;
    - c. The location and perimeter dimensions of each outdoor activity area to be used by enrolled children; and
    - d. The location, type, and height of the fence surrounding the outdoor activity area.
  2. A floor plan drawn to scale showing:
    - a. The drawing scale;
    - b. The length and width dimensions of each activity area used for child care services;
    - c. The width of each doorway;
    - d. The direction of each door's swing;

- e. The location of each hand washing sink, toilet, urinal, diaper changing area, and drinking fountain to be used by enrolled children; and
- f. The location and type of fire alarm system.
- D. In addition to the information required by subsection (A)(1), an applicant providing child care services only for school-age children in a facility located in a public school, shall submit to the Department a site plan as shown on two sets of final construction drawings or two school maps of the school campus showing:
  - 1. The location of each school building and outdoor activity area;
  - 2. The location, perimeter dimensions, and age groups of each activity area used by enrolled children;
  - 3. The location of each hand washing sink, toilet, urinal, diaper changing area, and drinking fountain to be used by enrolled children; and
  - 4. The location and dimensions of each outdoor activity area to be used by enrolled children.
- E. In addition to submitting the information required by subsection (A)(1), an applicant providing child care services in a facility that is located in a factory-built building as defined in A.R.S. § 41-2142(14) shall also meet the requirements in subsections (B), (C), and (D) for the type of facility providing child care and submit:
  - 1. An installation permit issued by the Arizona Office of Manufactured Housing;
  - 2. One set of final construction drawings that includes the stamp of the Arizona Office of Manufactured Housing;
  - 3. A foundation and tie-down plan for the factory-built building that is prepared and stamped by an engineer registered as prescribed in A.R.S. § 32-101 et seq.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4).

**Guidelines for Compliance (R9-5-607 - Required Physical Plant Documents)**

***R9-5-607 (E)***

- *A child care facility located in a factory built building is required to have an installation permit from the Arizona Office of Manufactured Housing.*

**R9-5-608. Repealed**

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Repealed effective October 17, 1997 (Supp. 97-4).

**R9-5-609. Repealed**

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Repealed effective October 17, 1997 (Supp. 97-4).

**R9-5-610. Repealed**

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Correction to subsection (F) as certified effective December 12, 1986; Amended subsection (A) effective July 7, 1988 (Supp. 88-3). Repealed effective October 17, 1997 (Supp. 97-4).

**R9-5-611. Repealed**

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended effective July 7, 1988 (Supp. 88-3). Repealed effective October 17, 1997 (Supp. 97-4).

**R9-5-612. Repealed**

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Repealed effective October 17, 1997 (Supp. 97-4).

**R9-5-613. Repealed**

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Repealed effective October 17, 1997 (Supp. 97-4).

**R9-5-614. Repealed**

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Amended subsection (C) effective July 7, 1988 (Supp. 88-3). Repealed effective October 17, 1997 (Supp. 97-4).

**ARTICLE 7. REPEALED**

*Article 7, consisting of Sections R9-5-701 through R9-5-708, repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).*



**R9-5-701. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted and amended effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted with changes effective October 4, 1990 (Supp. 90-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**R9-5-702. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency permanently adopted effective October 4, 1990 (Supp. 90-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**Table 2. Repealed**

**Historical Note**

New Table made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Table repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**R9-5-703. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted and amended effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; editorial corrections to labels of subsections (A)(8)(a)(i) through (A)(8)(a)(xix) (Supp. 89-4). Emergency rule readopted with changes effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted with changes effective October 4, 1990 (Supp. 90-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**R9-5-704. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency permanently adopted effective October 4, 1990 (Supp. 90-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**R9-5-705. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**R9-5-706. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**R9-5-707. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**R9-5-708. Repealed**

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**ARTICLE 8. REPEALED**

*Article 8, consisting of Sections R9-5-801 through R9-5-809, repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).*

**R9-5-801. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted and amended effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted with changes effective October 4, 1990 (Supp. 90-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**R9-5-802. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted and amended effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**R9-5-803. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted with changes effective October 4, 1990 (Supp. 90-4). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**R9-5-804. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**R9-5-805. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9,

1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**R9-5-806. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted and amended effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**R9-5-807. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted and amended effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**R9-5-808. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**R9-5-809. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**ARTICLE 9. REPEALED**

*Article 9, consisting of Sections R9-5-901 through R9-5-912, repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).*

**R9-5-901. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted and amended effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted with changes effective October 4, 1990 (Supp. 90-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**R9-5-902. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted and amended effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted with changes effective October 4, 1990 (Supp. 90-4). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).





**R9-5-1004. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**R9-5-1005. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**R9-5-1006. Repealed**

**Historical Note**

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

**CHAPTER 2. DEPARTMENT OF HEALTH SERVICES, TOBACCO-RELATED  
PROGRAMS: ARTICLE 1. SMOKE-FREE ARIZONA**

**R9-2-101. Definitions**

In addition to the definitions in A.R.S. § 36-601.01(A), the following definitions apply in this Article unless otherwise specified:

1. "Adult day care" means "adult day health care facility" as defined in A.R.S. § 36-401.
2. "Ashtray" means any receptacle that is designed for disposing of the debris from smoking materials such as ash, cigarette butts or filters, or cigar stubs.
3. "Calendar quarter" means a period from:
  - a. January 1 through March 31,
  - b. April 1 through June 30,
  - c. July 1 through September 30, or
  - d. October 1 through December 31.
4. "Child care facility" has the meaning in A.R.S. § 36-881.
5. "Child care group home" has the meaning in A.R.S. § 36-897.
6. "Complaint" means a written or oral statement of a possible violation of A.R.S. § 36-601.01.
7. "Contiguous area" means a place that:
  - a. Is physically attached to a public place or non-vehicle place of employment; or
  - b. Is separated from the public place or non-vehicle place of employment only by other places controlled by the proprietor of the public place or non-vehicle place of employment.
8. "Controlled" means under the authority and responsibility of a proprietor.
9. "Department" means the Arizona Department of Health Services.
10. "Department's designee" means a state agency or political subdivision to which the Department delegates any functions, powers, or duties under A.R.S. § 36-601.01.
11. "Drift" means the physical movement of tobacco smoke, regardless of cause, into any area where smoking is prohibited by A.R.S. § 36-601.01.
12. "Emergency exit" means a doorway in a building or facility used for egress to the outdoors only when there is an immediate threat to the health or safety of an individual.
13. "Entering" means an individual going into or leaving a building or facility.
14. "Entrance" means a doorway in a building or facility that:
  - a. Is used by an individual for ingress from the outdoors or egress to the outdoors, and
  - b. Excludes:
    - i. An emergency exit, and
    - ii. A doorway for outdoor patio patrons.
15. "Health care institution" means a building or facility regulated under A.R.S. Title 36, Chapter 4.
16. "Health care professional" means one of the following individuals regulated under A.R.S. Title 32 or A.R.S. Title 36, Chapter 6, Article 7 or Chapter 17, including:
  - a. A podiatrist;
  - b. A doctor of chiropractic or chiropractic assistant;
  - c. A dentist, dental consultant, dental hygienist, or denturist;
  - d. A doctor of medicine;
  - e. A doctor of naturopathic medicine or naturopathic medical assistant;
  - f. A registered nurse practitioner, registered nurse, practical nurse, registered or practical nurse licensed by a state other than Arizona and practicing in Arizona according to the Nurse Licensure Compact, A.R.S. § 32-1668, or nursing assistant;
  - g. A dispensing optician;
  - h. An optometrist;
  - i. A doctor of osteopathic medicine;
  - j. A pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee;
  - k. A physical therapist or physical therapist assistant;
  - l. A psychologist;
  - m. A veterinarian or veterinary technician;
  - n. A physician assistant;
  - o. A radiologic technologist, including a practical radiologic technologist in podiatry, unlimited practical radiologic technologist, nuclear medicine technologist, or practical technologist in bone densitometry;
  - p. A homeopathic physician or a medical assistant employed by a homeopathic physician;
  - q. A behavioral health professional, including a baccalaureate social worker, master social worker, clinical social worker, professional counselor, associate counselor, marriage and family therapist, associate marriage and family therapist, associate substance abuse counselor, independent substance abuse counselor, or substance abuse technician;
  - r. An occupational therapist or occupational therapy assistant;
  - s. A respiratory therapist or respiratory therapy technician;
  - t. An acupuncturist;
  - u. An athletic trainer;
  - v. A massage therapist;
  - w. A midwife;

- x. A hearing aid dispenser;
  - y. An audiologist; or
  - z. A speech-language pathologist or speech-language pathology assistant.
- 17. "Open to the general public" means when the proprietor of a veterans or fraternal club permits an individual who is not a member, an employee, or a bona fide guest as defined in A.R.S. § 4-101 to be present in the veterans or fraternal club.
  - 18. "Outdoor patio" means an area designated by a proprietor according to R9-2-108(A).
  - 19. "Outdoor patio patron" means an individual who is occupying an outdoor patio.
  - 20. "Permeable" means permitting tobacco smoke to pass through.
  - 21. "Private residence" means a structure, other than a health care institution, where an individual lives and sleeps.
  - 22. "Proprietor" means an owner, operator, manager or other person in control of a public place or a place of employment.
  - 23. "Reasonable distance" means the distance that meets the requirements in R9-2-102(A).
  - 24. "Tobacco products and accessories" means:
    - a. Smoking materials such as cigars, cigarettes, or pipe tobacco; and
    - b. Smoking-related materials such as lighters, humidors, pipes, or cigarette cases.
  - 25. "Vehicle" means motor vehicle as defined in A.R.S. § 28-101.
  - 26. "Ventilation system" means the natural or mechanical means of supplying air to, or removing air from a space.

**R9-2-102. Reasonable Distance**

- A. Except as permitted in R9-2-108(D) or R9-2-108(E), a public place or non-vehicle place of employment shall have a distance where outside smoking is prohibited of at least 20 feet in all directions measured from each outer edge of an entrance, an open window, or a ventilation system.
- B. A proprietor of a public place or non-vehicle place of employment shall not permit tobacco smoke to drift into the area where smoking is prohibited as described in subsection (A).

**R9-2-103. Individual Responsibilities**

- A. An individual shall not smoke tobacco in an area of a public place or place of employment where smoking is prohibited by A.R.S. § 36-601.01 or R9-2-102(A).
- B. An individual in an area of a public place or place of employment where smoking is prohibited by A.R.S. § 36-601.01 or R9-2-102(A) shall stop smoking immediately when requested to stop smoking by the proprietor of the public place or a place of employment.

**R9-2-104. Proprietor Responsibilities**

- A. A proprietor shall:
  - 1. Not permit smoking in a public place, a place of employment, or within the distance required in R9-2-102(A) except according to this Article and the exceptions listed in A.R.S. § 36-601.01(B);
  - 2. Not permit tobacco smoke to drift into a building or facility through an entrance, a window, a ventilation system, or other means;
  - 3. Post signs according to A.R.S. § 36-601.01(E)(1) and R9-2-105;
  - 4. Remove all ashtrays from all areas where smoking is prohibited; and
  - 5. Communicate that smoking is prohibited in places of employment to:
    - a. All existing employees by the effective date of this Article, and
    - b. An applicant for employment at the time of the application for employment.
- B. If a building or facility that is controlled by a proprietor contains several places of employment or public places that are controlled by other proprietors:
  - 1. The proprietor of the entire building or facility shall comply with the requirements in subsection (A) for the area controlled by the proprietor of the entire building or facility, and
  - 2. The proprietor of each place of employment or public place shall comply with the requirements in subsection (A) for the area controlled by the proprietor of the place of employment or public place.
- C. If an individual in an area controlled by a proprietor is smoking in violation of A.R.S. § 36-601.01, the proprietor shall:
  - 1. Inform the individual that the individual is in violation of A.R.S. § 36-601.01, and
  - 2. Request that the individual stop smoking immediately.
- D. A proprietor of a veterans or fraternal club shall not permit smoking in an area of the veterans or fraternal club that is open to the general public.
- E. A proprietor of a retail tobacco store where smoking is permitted shall comply with R9-2-107.
- F. A proprietor of an outdoor patio where smoking is permitted shall comply with R9-2-108.
- G. A proprietor may declare that smoking is prohibited in an entire establishment, facility, or outdoor area.
- H. In a vehicle owned and operated by a proprietor during working hours, the proprietor shall:
  - 1. Not permit smoking in the vehicle when:
    - a. More than one individual occupies the vehicle, and
    - b. The vehicle is used for business purposes; and
  - 2. Post signs according to A.R.S. § 36-601.01(E)(1), A.R.S. § 36-601.01(E)(2), and R9-2-105(C).

**R9-2-105. Sign Requirements**

- A. To meet the requirements of A.R.S. §§ 36-601.01(E)(1) and 36-601.01(E)(2), a proprietor of a public place or non-vehicle place of employment shall post signs that:
  - 1. Are no smaller than four inches by six inches; and
  - 2. Contain:
    - a. The international no smoking symbol or the words "No Smoking";
    - b. The telephone number designated by the Department for making complaints;



- c. The website address designated by the Department for making complaints; and
    - d. Letters, numbers, and symbols of sufficient size to be clearly legible to an individual of normal vision from a distance of five feet; and
  - 3. Include a citation to A.R.S. § 36-601.01.
- B. A proprietor of a public place or non-vehicle place of employment shall post a sign that meets the requirements in subsection (A):
  - 1. At every entrance,
  - 2. At a height and location easily seen by an individual entering the public place or non-vehicle place of employment, and
  - 3. So that the sign is not obscured in any way.
- C. A proprietor of a vehicle described in A.R.S. § 36-601.01(A)(7) shall:
  - 1. Post at least one sign that:
    - a. Is no smaller than two inches by three inches;
    - b. Meets the requirements in subsections (A)(2)(a) through (A)(2)(c); and
    - c. Contains letters, numbers, and symbols of sufficient size to be clearly legible to an individual of normal vision from a distance of three feet;
  - 2. Include a citation to A.R.S. § 36-601.01 on the sign; and
  - 3. Firmly affix the sign to:
    - a. A vehicle door window,
    - b. The vehicle dashboard, or
    - c. Another area in the vehicle that is visible to each occupant in the vehicle.

**R9-2-106. Private Residence**

- A. Smoking is prohibited in a private residence licensed or certified by the Department or in areas of a private residence licensed or certified by the Department as:
  - 1. An adult day care,
  - 2. A child care facility,
  - 3. A child care group home, or
  - 4. A health care institution other than an adult day care.
- B. Smoking is prohibited in a health care professional's private residence:
  - 1. In an area where the health care professional provides services to an individual, and
  - 2. When the health care professional is providing services to an individual.
- C. A.R.S. § 36-601.01 does not apply to the private residence of an individual who is receiving services from a health care professional in the individual's private residence.

**R9-2-107. Retail Tobacco Store**

- A. A proprietor may permit smoking in a retail tobacco store only if the retail tobacco store meets the definition in A.R.S. § 36-601.01(A)(10) and the requirements in A.R.S. § 36-601.01(B)(3) and this Section.
- B. The proprietor of a retail tobacco store where smoking is permitted and that begins operating after January 1 of a calendar year shall complete, by the retail tobacco store's first day of operation, an affidavit that contains:
  - 1. The name of the proprietor of the retail tobacco store,
  - 2. The name and address of the retail tobacco store,
  - 3. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit,
  - 4. A statement that the retail tobacco store expects to derive at least 51 percent of its gross income during each calendar year from the sale of tobacco products and accessories as required by A.R.S. § 36-601.01,
  - 5. A statement describing the documents that contain the facts supporting the statement in subsection (B)(4),
  - 6. The signature of the proprietor of the retail tobacco store,
  - 7. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit, and
  - 8. The date of the Arizona notary's signature.
- C. The proprietor of a retail tobacco store where smoking is permitted and that has been in operation for at least an entire calendar year shall complete, by January 31 of each year, an affidavit that contains:
  - 1. The name of the proprietor of the retail tobacco store,
  - 2. The name and address of the retail tobacco store,
  - 3. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit,
  - 4. A statement that the retail tobacco store derived at least 51 percent of its gross income during the previous calendar year from the sale of tobacco products and accessories,
  - 5. A statement describing the documents that contain the facts supporting the statement in subsection (C)(4),
  - 6. The signature of the proprietor of the retail tobacco store,
  - 7. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit, and
  - 8. The date of the Arizona notary's signature.
- D. If the Department or the Department's designee receives a complaint under R9-2-109(A) about a retail tobacco store where smoking is permitted, the proprietor of the retail tobacco store shall provide to the Department or the Department's designee:
  - 1. The affidavit under subsection (B) or the most current affidavit under subsection (C), whichever is appropriate; and
  - 2. Documents that enable the Department or the Department's designee to determine the percent of gross income derived from the sale of tobacco products and accessories:
    - a. For the calendar quarter immediately preceding the date of the complaint; or

- b. If the retail tobacco store was not in operation for the entire calendar quarter immediately preceding the date of the complaint, for the period beginning on the date the retail tobacco store opened and ending on the date of the complaint.
- E. The proprietor of a retail tobacco store where smoking is permitted shall retain on the premises of the retail tobacco store and make available to the Department or the Department's designee upon request:
  - 1. The affidavit under subsection (B) or the most current affidavit under subsection (C), whichever is appropriate; and
  - 2. The documents:
    - a. Identified under subsection (B)(5) or subsection (C)(5), whichever is appropriate; and
    - b. Required under subsection (D)(2).

**R9-2-108. Outdoor Patio**

- A. A proprietor may designate an area as an outdoor patio where smoking is permitted only if the area:
  - 1. Is a contiguous area of a place of employment or public place;
  - 2. Is controlled by the proprietor of the place of employment or public place; and
  - 3. Has:
    - a. At least one side that consists of:
      - i. Open space;
      - ii. Permeable material;
      - iii. A combination of open space and permeable material; or
      - iv. A combination of open space, permeable material, and a non-permeable wall that is not higher than three and one-half feet or the minimum height required by an applicable local ordinance or building code, whichever is greater; or
    - b. No overhead covering or an overhead covering that consists of:
      - i. Permeable material, or
      - ii. A combination of open space and permeable material.
- B. If an outdoor patio where smoking is permitted has a doorway for outdoor patio patrons and does not have a wall that prevents individuals from entering the outdoor patio, the proprietor shall:
  - 1. Inform individuals that the doorway:
    - a. Is not an entrance, and
    - b. Is a doorway for outdoor patio patrons; and
  - 2. Direct individuals who are not outdoor patio patrons to an entrance.
- C. If a proprietor designates an area as an outdoor patio where smoking is permitted, the proprietor shall not permit tobacco smoke to drift into areas where smoking is prohibited through entrances, windows, ventilation systems, or other means.
- D. The reasonable distance required in R9-2-102(A) does not apply to a doorway for outdoor patio patrons, a window, or a ventilation system located in an area designated as an outdoor patio where smoking is permitted.
- E. If an outdoor patio is located less than 20 feet from any entrance of a public place or non-vehicle place of employment, a proprietor may permit smoking on the outdoor patio only if the proprietor uses a method that:
  - 1. Permits an individual to avoid breathing tobacco smoke when using the entrance at the public place or non-vehicle place of employment, and
  - 2. Does not permit tobacco smoke to drift into the public place or non-vehicle place of employment through entrances, open windows, ventilation systems, or other means.
- F. A proprietor may designate an outdoor patio as an area where smoking is prohibited.

**R9-2-109. Complaint; Observation; Notification; Inspection**

- A. When a person makes a complaint to the Department or the Department's designee under A.R.S. § 36-601.01, the complaint shall include:
  - 1. The name and address of the public place or place of employment that is the subject of the complaint;
  - 2. The date and approximate time of the occurrence that gave rise to the complaint;
  - 3. A description of the occurrence that gave rise to the complaint; and
  - 4. Any other information relevant to the occurrence that gave rise to the complaint.
- B. An individual shall make a complaint according to subsection (A) if the individual:
  - 1. Conducted an inspection pursuant to:
    - a. A.R.S. Title 36, Chapter 4 or Chapter 7.1; or
    - b. A.R.S. § 36-136(D) and 9 A.A.C. 8; and
  - 2. During the inspection, observed a possible violation of A.R.S. § 36-601.01.
- C. Within 15 days after receipt of a complaint made according to subsection (A), the Department or the Department's designee shall:
  - 1. Notify the proprietor at the public place or place of employment about the complaint; or
  - 2. Conduct an inspection, for compliance with A.R.S. § 36-601.01, of the public place or place of employment.
- D. If a complaint made according to subsection (A) is not resolved under subsection (C)(1), the Department or the Department's designee shall conduct an inspection, for compliance with A.R.S. § 36-601.01, of the public place or place of employment that is the subject of the complaint.

**R9-2-110. Determination of Violation**

In determining whether a violation of A.R.S. § 36-601.01 has occurred, the Department or the Department's designee shall consider the following:

- 1. The presence of an ashtray in an area where smoking is prohibited;
- 2. The lack of a sign that is required under A.R.S. § 36-601.01(E) or the presence of a sign that does not meet the requirements of R9-2-105;
- 3. The presence of smoking;
- 4. The presence of tobacco ashes, cigarette butts or filters, or cigar stubs in an area where smoking is prohibited;

5. The presence of tobacco smoke that drifts into a place of employment or public place through entrances, windows, ventilation systems, or other means; and
6. Except as provided in R9-2-108(D) and R9-2-108(E), the presence of tobacco smoke within a reasonable distance from entrances, open windows, or ventilation systems.

**R9-2-111. Notice of Violation; Notice of Assessment**

- A. After the Department or the Department's designee determines that a violation of A.R.S. § 36-601.01 has occurred, and based on the criteria in R9-2-112, the Department or the Department's designee may send to the proprietor at the place of employment or public place a written notice of violation that includes:
  1. The nature of the violation;
  2. The date and time that the violation occurred;
  3. The name, telephone number, and e-mail address of the Department contact person or the contact person of the Department's designee; and
  4. If a civil penalty is being assessed, a notice of assessment.
- B. If the Department or the Department's designee issues a notice of violation or a notice of assessment, a person to whom the notice is issued may appeal the determination that a violation has occurred or assessment of a civil penalty:
  1. According to A.R.S. Title 41, Chapter 6, Article 10, if the Department made the determination or assessment; or
  2. According to procedures of the Department's designee that are consistent with A.R.S. Title 41, Chapter 6, Article 10, if the Department's designee made the determination or assessment.

**R9-2-112. Criteria for Issuing a Notice of Violation or Notice of Assessment**

In determining whether to issue a notice of violation under A.R.S. § 36-601.01(G)(5), whether to issue a notice of assessment under A.R.S. § 36-601.01(G)(6), or the amount of a civil penalty that is being assessed, the Department or the Department's designee shall consider:

1. The seriousness of the violation;
2. Any economic benefit that results from the violation;
3. The duration of the violation;
4. The previous violations of A.R.S. § 36-601.01 at the place of employment or public place, including:
  - a. The type and severity of any previous violation,
  - b. The number of individuals affected by the previous violations,
  - c. The total number of previous violations, and
  - d. The length of time from the first violation to the current violation;
5. Any good faith efforts to comply with the requirements of A.R.S. § 36-601.01, including:
  - a. Reporting violations to the Department or the Department's designee; and
  - b. Meeting the requirements of A.R.S. § 36-601.01(I) by:
    - i. Informing an individual who is smoking that smoking is illegal, and
    - ii. Requesting that the individual immediately stop the illegal smoking; and
6. Other factors affecting the public health and safety the Department or the Department's designee deems relevant.

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**DEPARTMENT OF HEALTH SERVICES  
DIVISION OF LICENSING SERVICES  
OFFICE OF CHILD CARE LICENSING**

**SUBSTANTIVE POLICY STATEMENT # SP-009-ALS-CCL:  
IMMUNIZATION RECORDS REQUIRED IN A CHILD CARE  
FACILITY**

*This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes Section 41-1033 for a review of the statement.*

This substantive policy statement describes the Department's interpretation of the following requirements in A.A.C. R9-5-305:

- a. That a child care facility obtain documentation of a child's immunizations on an immunization record,
- b. That a staff member update a child's immunization record when a parent provides evidence of immunization, and
- c. That a staff member document in a child's immunization record the date on which the child's parent is notified of a required immunization.

This substantive policy statement also describes the Department's interpretation of the requirement in A.A.C. R9-5-304(B)(10) that a child's Emergency, Information, and Immunization Record card contain the child's immunization record.

A.A.C. R9-5-305(A)(1) states:

- A. A licensee shall not permit an enrolled child to attend a facility until the facility receives either a child's written immunization record or an exemption affidavit.
  1. A child's immunization record provided by a parent shall contain the information required by A.A.C. R9-6-703 provided by a health care provider, stating that the child has received all current, age-appropriate immunizations required by the Department under A.A.C. R9-6-701(A) and (B).

The Department interprets the requirement for "a child's written immunization record" and "a child's immunization record" to mean that a parent is required to present the original or a copy of an official immunization record. The official immunization record is the document on which a health care provider who administers an immunization (or the health care provider's designee) records the immunization administered, the date of administration, and the name and signature of the health care provider. If the original official immunization record is presented, a staff member is required to make a copy and affix the copy to the child's Emergency, Information, and Immunization Record card. If a copy is presented, a staff member is required to affix the copy to the child's Emergency, Information, and Immunization Record card. This interpretation is consistent with the language of R9-5-305(A)(1) that requires that the immunization record contain the information required by A.A.C. R9-6-703, which requires in A.A.C. R9-6-703(B) that an immunization record contain the signature of a physician or an authorized representative of a health agency.

A.A.C. R9-5-305(B) states:

- B. A licensee shall ensure that a staff member updates a child’s immunization record on the child’s Emergency, Information, and Immunization Record card each time a parent provides the licensee with a written statement from a child’s health care provider that the child has received an age-appropriate immunization required by R9-6-701(A) and (B).

The Department interprets the requirement that a staff member update a child’s immunization record on the child’s Emergency, Information, and Immunization Record card to mean that a staff member is required to affix a copy of the child’s updated official immunization record to the child’s Emergency, Information, and Immunization Record card when the child’s parent provides an updated official immunization record to copy or a copy of an updated official immunization record.

A.A.C. R9-5-305(C) states:

- C. If a child’s immunization record indicates that a child has not received an age-appropriate immunization required by A.A.C. R9-6-701(A) and (B), a licensee shall ensure that a staff member:
  - 1. Notifies a parent in writing that the child may attend the facility for not more than 15 days from the date of the notification unless the parent provides the facility with written evidence of the required immunization or an exemption affidavit as prescribed by subsection (A)(2); and
  - 2. Documents in the child’s immunization record the date on which a parent is notified of an immunization required by the Department.

The Department interprets the requirement that a staff member document the date of notification in the child’s immunization record to mean that a staff member is required to document the date of notification on the child’s Emergency, Information, and Immunization Record card or on the copy of the child’s official immunization record attached to the child’s Emergency, Information, and Immunization Record card. The Emergency, Information, and Immunization Record card includes space for this information, which a staff member may use.

A.A.C. R9-5-304(B)(10) states:

- B. At the time of enrollment, a licensee shall require a child’s parent to complete an Emergency, Information, and Immunization Record card that is signed by a parent containing:
  - ...
  - 10. A child’s immunization record or a notation of exemption affidavit, required by R9-5-305(A).

The Department interprets the requirement that a child’s parent complete an Emergency, Information, and Immunization Record card that contains a child’s immunization record to mean that a child’s parent is required to complete an Emergency, Information, and Immunization Record card that contains the information required in A.A.C. R9-5-304(B)(1) through (9) and is required to present the original or a copy of the child’s official immunization record so that a

copy of the child's official immunization record can be attached to the child's Emergency, Information, and Immunization Record card.

Although the Department does not prohibit a child care facility from requiring that parents fill in the immunization information section of the Emergency, Information, and Immunization Record card, the Department does not require child care facilities to have parents complete the immunization information section of the Emergency, Information, and Immunization Record card. Even if the immunization information section of a child's Emergency, Information, and Immunization Record card is completed, the Department requires that a copy of the child's official immunization record be attached to the child's Emergency, Information, and Immunization Record card.

**DEPARTMENT OF HEALTH SERVICES  
DIVISION OF LICENSING SERVICES  
OFFICE OF CHILD CARE LICENSING**

**SUBSTANTIVE POLICY STATEMENT # SP-021-ALS-CCL: USING  
UNLICENSED SPACE FOR THE PROVISION OF CHILD CARE  
SERVICES**

*This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes Section 41-1033 for a review of the statement.*

The purpose of this substantive policy statement is to notify the public that the Department considers providing child care services in unlicensed space to be a violation of A.A.C. R9-5-607 and R9-5-206(B) and (D) because it indicates that the licensee has failed to properly designate the premises to be licensed and has made a change in space utilization without obtaining prior approval from the Department.

The Department requires an applicant for a child care facility license to indicate to the Department which areas will be used for the provision of child care services. Each applicant for a license to operate a child care facility is required to submit to the Department a brief narrative description of the intended facility, including the location and assigned age groups of each room in which activities are or will be conducted. A.A.C. R9-5-607(A)(6).

An applicant for a license for a child care facility not located in a public school is required, under A.A.C. R9-5-607(B)(1) and (2), to submit construction drawings including:

1. A floor plan showing the length and width of each activity area to be used for child care services, among other things; and
2. A site plan showing, among other things:
  - a. The boundaries and dimensions of the property on which the physical plant is located;
  - b. The location and dimensions of buildings, outdoor activity areas, and parking lots;
  - c. The location and height of fences and gates; and
  - d. The location of each driveway and swimming pool.

An applicant for a license for a child care facility providing care for children younger than school-age children at a public school is required to submit a site plan showing the location of each activity area to be used for child care services and of each outdoor activity area to be used by enrolled children and a floor plan showing the length and width of each activity area to be used by enrolled children. A.A.C. R9-5-607(C)(1)(b) and (c) and (C)(2)(b). Likewise, an applicant for a license for a child care facility providing care only for school-age children at a public school is required to submit construction drawings or school maps showing the location, dimensions, and age groups of each activity area to be used by enrolled children. A.A.C. R9-5-607(D)(2).

Prior to granting a license, the Department inspects each area identified by the applicant as an area to be used for the provision of child care services. See A.A.C. R9-5-208(A). The Department inspects these areas to determine whether the areas comply with the requirements of A.R.S. Title 36, Chapter 7.1, Article 1 and 9 A.A.C. 5, Articles 1 through 6. The Department will not grant a license to an applicant whose physical plant is not in substantial compliance with the requirements of A.R.S. Title 36, Chapter 7.1, Article 1 and 9 A.A.C. 5, Articles 1 through 6. See A.A.C. R9-5-202(C)(5).



## **Substantive Policies**

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### Department of Health Services – Day Care Centers

If a licensee desires to use an indoor or outdoor area at the same address as a child care facility but that has not been identified by the licensee in the license application and inspected and approved by the Department as an area to be used for child care services (“unlicensed space”), the licensee is required to apply for approval of a change in space utilization. A.A.C. R9-5-206(B). A licensee is prohibited from using unlicensed space for the provision of child care services. *See* A.A.C. R9-5-206(D).

The Department is aware of the practice of a child care facility’s taking what are referred to as “field trips” to unlicensed space. This practice is a violation of A.A.C. R9-5-607 and R9-5-206 (B) and (D) because the licensee has failed to properly designate the activity areas to be used for child care services at the facility site and has made a change in space utilization without obtaining prior Department approval.

**DEPARTMENT OF HEALTH SERVICES  
DIVISION OF LICENSING SERVICES  
OFFICE OF CHILD CARE LICENSING**

**SUBSTANTIVE POLICY #SP-029-DLS-CCL: CLARIFICATION ON  
WHETHER A CHILD CARE FACILITY MAY REQUIRE A RELEASE  
OF LIABILITY AS A CONDITION OF ENROLLMENT OR FOR  
PARTICIPATION IN AN ACTIVITY, INCLUDING A FIELD TRIP**

*This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes Section 41-1033 for a review of the statement.*

The purpose of this substantive policy statement is to clarify whether a child care facility may require a signed release of liability as a condition of enrollment or for participation in an activity, including a field trip. Currently, some child care facilities require a parent to sign a release of liability as a condition of initial or continued enrollment, or for participation in an activity such as a field trip.

A.R.S. § 36-883(A) requires the Arizona Department of Health Services (ADHS) to prescribe reasonable rules regarding the health, safety, and well-being of the children to be cared for in a child care facility. Under this authority, ADHS requires a child care facility to carry certain insurance coverage.

R9-5-308, Insurance Requirements, states:

- A. A licensee shall secure and maintain the following minimum insurance coverage:
  - 1. General facility liability insurance of at least \$300,000; and
  - 2. Motor vehicle insurance coverage required by R9-5-517(A)(2) for each motor vehicle used by a licensee to transport enrolled children.
- B. A licensee shall provide a copy of each certificate of insurance to the Department before issuance of a license and at any time that the licensee's insurance coverage expires, is canceled, or changes.

Because requiring a parent to sign a release of liability is an attempt to nullify the protection afforded to enrolled children under the insurance coverage required by R9-5-308, ADHS interprets the practice of requiring releases of liability as a means to circumvent those insurance requirements. ADHS interprets the requirements in R9-5-308 as prohibiting a child care facility from requiring a parent to sign a release of liability as a condition of enrollment or for participation in an activity, including a field trip.

*Effective July 15, 2005  
Arizona Department of Health Services  
Division of Licensing Services  
Office of Child Care Licensing  
150 North 18th Avenue, Suite 400  
Phoenix, AZ 85007*

**DEPARTMENT OF HEALTH SERVICES  
DIVISION OF LICENSING SERVICES  
OFFICE OF CHILD CARE LICENSING**

**SUBSTANTIVE POLICY #SP-031-DLS-CCL: INTERPRETATION OF THE  
TERM "TUTORING PROVIDED BY PUBLIC SCHOOLS SOLELY TO  
IMPROVE SCHOOL PERFORMANCE" IN A.R.S. § 36-884(5)**

*This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.*

The purpose of this substantive policy statement is to clarify how the Arizona Department of Health Services (Department) interprets the phrase “tutoring provided by public schools solely to improve school performance”, for the purpose of granting an exemption to a public school from being licensed as a child care facility, under A.R.S. § 36-884(5).

Child care is defined in A.R.S. § 36-881(2) as:

“the care, supervision and guidance of a child or children, unaccompanied by a parent, guardian or custodian, on a regular basis, for periods of less than twenty-four hours per day, in a place other than the child's or the children's own home or homes.”

A child care facility is defined in A.R.S. § 36-881(3) as:

“any facility in which child care is regularly provided for compensation for five or more children not related to the proprietor.”

An exemption from licensure is provided in A.R.S. § 36-884(5), which states:

“This article does not apply to the care given to children by or in:

“Any facility that provides training only in specific subjects, including dancing, drama, music, self-defense or religion and tutoring provided by public schools solely to improve school performance.”

This substantive policy addresses the exemption for “tutoring provided by public schools solely to improve school performance,” which contains two components: 1) tutoring provided by public schools and 2) solely to improve school performance.

“Tutoring” is defined in Merriam Webster's dictionary as: to teach or guide, usually individually, in a special subject, or for a particular purpose. This definition contains three factors that are reviewed by the Department in determining whether a public school is providing tutoring. The three factors are: 1) to teach or guide, 2) usually individually, and 3) in a special subject or for a particular purpose.

Regarding the first factor, the Department interprets the phrase “to teach or guide” in the definition of “tutoring” to mean to academically instruct or impart academic knowledge or skill. A method of providing academic instruction or knowledge may be found in a structured educational program for a student who displays below average performance in a particular academic subject, or extra academic instruction to a student who achieves average or above average performance in a particular subject.

A person who teaches or guides a student must be qualified and knowledgeable in the academic subject in which the person is offering instruction to the student. The person who is to teach or guide may be an advanced student, a certified teacher, or a person specializing in an academic subject.

To teach or guide is different than to provide “child care services”, which is defined in R9-5-101(25) as “the range of activities and programs provided by a licensee to a child, including personal care, supervision, education, guidance, and transportation.” Child care services encompass a wide array of activities and programs and a child care facility is licensed to protect the health and safety of enrolled children. When teaching or guiding a student, the focus is on providing instruction in a specific subject or subjects to improve academic performance.

The second factor to be evaluated is “usually individually.” While the term “usually” indicates that tutoring is commonly provided on a single person basis, the term does not require that the tutoring always be provided on an individual basis. Thus, tutoring may be provided to students in a group. However, each student must have instruction based on the student's individual academic area of need. Once the individual academic area of need is identified, the student may participate in groups throughout much of the tutoring.

When reviewing the third factor, the Department considers whether the instruction is in a “special subject” or for a particular purpose. “Special subject” in the definition “tutoring” means an academic subject in which a student receives supplemental instruction. The supplemental instruction must be in addition to the instruction taught during a regular school day. A typical

## **Substantive Policies**

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### Department of Health Services – Day Care Centers

special subject would be in the academic areas of reading, writing, math, science, and/or social studies. The Department interprets “particular purpose” in the definition of “tutoring” to mean to increase the student's understanding of the specific academic subject and to improve the student's school performance.

After reviewing the three factors, the Department will determine whether a public school is providing tutoring services. If the Department determines the public school is providing tutoring, the Department will consider whether the tutoring is being provided “solely to improve school performance.”

The way for a public school to satisfy the “solely to improve school performance” component is for a public school to establish a tutoring program and enter into a contract with the Arizona Department of Education to provide the tutoring program to students at the public school. The tutoring program would include performance based assessments and annual evaluations of each student's performance.

If the Department determines a public school is providing tutoring solely to improve school performance, the public school is not required to be licensed as a child care facility because of the tutoring exemption in A.R.S. § 36-884(5). If the Department determines the public school is providing child care services and not tutoring, the public school is required to be licensed.

If the Department makes a decision that the exemption does not apply and takes an enforcement action, the enforcement action may be appealed according to A.R.S. §§ 41-1092 et seq.

**DEPARTMENT OF HEALTH SERVICES  
DIVISION OF LICENSING SERVICES  
OFFICE OF CHILD CARE LICENSING**

**SUBSTANTIVE POLICY #SP-033-DLS-CCL: CLARIFICATION OF  
R9-5-401(3)(A), OF CURRENT AND CONTINUOUS ENROLLMENT IN HIGH  
SCHOOL OR A HIGH SCHOOL EQUIVALENCY CLASS, TO BE AN  
ASSISTANT TEACHER-CAREGIVER.**

*This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.*

The purpose of this substantive policy statement is to clarify R9-5-401(3)(a), that establishes the assistant teacher-caregiver requirement of current and continuous enrollment in high school or a high school equivalency class.

R9-5-401(3) requires an assistant teacher-caregiver to provide the licensee with written documentation of one of the following:

- a. Current and continuous enrollment in high school or a high school equivalency class,
- b. High school or high school equivalency diploma,
- c. Enrollment with a STRIVE program, or
- d. Enrollment in vocational rehabilitation as defined in A.R.S. § 23-501(8).

R9-5-401(3)(a) requires that an individual must provide a licensee with written documentation of current and continuous enrollment in high school or a high school equivalency class, in order to be qualified as a teacher-caregiver at a licensed child care facility. The rule does not mention whether a student currently enrolled in an accredited college or university meets the requirement for current and continuous enrollment in high school or a high school equivalency class.

The Department has determined that an assistant teacher-caregiver may meet the requirement of current and continuous enrollment in high school or a high school equivalency class by providing the licensee with written documentation of current and continuous enrollment in an accredited college or university. If an assistant teacher-caregiver is currently enrolled in an accredited college or university, the Department will accept this as meeting the minimal requirement of a high school or high school equivalency class because a college level class is at least equal to, or exceeds the education level of a high school or high school equivalency class.

*Effective March 31, 2006  
Arizona Department of Health Services  
Division of Licensing Services  
Office of Child Care Licensing  
150 North 18th Avenue, Suite 400  
Phoenix, AZ 85007*

**Substantive Policies**

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Department of Health Services – Day Care Centers

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# ARIZONA DEPARTMENT OF HEALTH SERVICES

## OFFICE OF CHILD CARE LICENSING

### ARIZONA REVISED STATUTES

#### TITLE 36, CHAPTER 7.1, ARTICLES 1, 3, 5: CHILD CARE PROGRAMS

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## ARTICLE 1. DAY CARE CENTERS

### **§ 36-881. Definitions**

In this article, unless the context otherwise requires:

1. "Child" means any person through the age of fourteen years. Child also means a person who is under eighteen years of age if the child has a developmental disability as defined in action § 36-551 or has at least one of the disabilities listed in § 15-761, paragraph 2 and requires special education as defined in § 15-761.
2. "Child care" means the care, supervision and guidance of a child or children, unaccompanied by a parent, guardian or custodian, on a regular basis, for periods of less than twenty-four hours per day, in a place other than the child's or the children's own home or homes.
3. "Child care facility" means any facility in which child care is regularly provided for compensation for five or more children not related to the proprietor.
4. "Controlling Person" means a person who:
  - a. Has through ownership, the power to vote at least ten per cent of the outstanding voting securities.
  - b. If the applicant or licensee is a partnership, is the general partner or a limited partner who holds at least ten per cent of the voting rights of the partnership.
  - c. If the applicant or licensee is a corporation, an association or a limited liability company, is the president, the chief executive officer, the incorporator, an agent or any person who owns or controls at least ten per cent of the voting securities.
  - d. Holds a beneficial interest in ten per cent or more of the liabilities of the applicant or the licensee.
5. "Department" means the department of health services.
6. "Director" means the director of the department of health services.
7. "Person" means an individual, partnership, corporation, limited liability company, association, day nursery, nursery school, day camp, kindergarten, child care agency, school governing board, charter school or child care center that operates a child care facility.
8. "Substantial compliance" means that the nature or number of violations revealed by any type of inspection or investigation of an applicant for licensure or a licensed child care facility does not pose a direct risk to the life, health or safety of children.

### **§ 36-882. License; posting; transfer prohibited; fee**

- A. A child care facility shall not receive any child for care, supervision or training unless the facility is licensed by the department of health services.
- B. An application for a license shall be made on a form prescribed by the department and shall include all information required by the department including:
  1. The name and business or residential address of each controlling person and an affirmation by the applicant that no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state or has had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.
  2. The names and addresses of the owners and lessees of any agricultural land within one-fourth mile of the facility. Within ten days of receipt of an application for a license, the department shall notify the owners and lessees of agricultural land, as listed on the application.
- C. On application for a license the department shall investigate the applicant's physical space, activities and standards of care. If the department is satisfied that the applicant and the applicant's facility are in substantial compliance with the requirements of this article and the facility agrees to carry out a plan acceptable to the director to eliminate any deficiencies, the department shall issue a regular license. If the facility's director changes, the department may require the regular license to revert to a provisional license for a period of not to exceed six months. The department shall issue a regular license on satisfactory completion of the provisional period for the remainder of the licensure period. The department may issue a provisional license for a period not to exceed six months to a child care facility that is temporarily unable to maintain substantial compliance with the established standards and does not threaten the health or safety of children. A provisional license shall state the reason for provisional status.
- D. The department shall deny any license that affects agricultural land regulated pursuant to § 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of § 3-365. If

the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the department may license the child care facility to be located within the affected buffer zone. The agreement may include any stipulations regarding the child care facility, including conditions for future expansion of the facility and changes in the operational status of the facility that will result in a breach of the agreement. This subsection shall not apply to the issuance or renewal of a license for a child care facility located in the same location for which a child care facility license was previously issued.

E. An applicant for a license shall submit the notarized form required pursuant to § 36-883.02 with the application and shall have a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.

F. The fee for an initial application for licensure is one hundred fifty dollars and is not refundable. The application fee is for the first full licensure period including any provisional period. The application fee for renewal of a license is one hundred fifty dollars and is not refundable. An applicant for renewal who fails to submit the application forty-five days before the expiration of the license is subject to a fifty dollar late filing fee. The department shall deposit, pursuant to §§ 35-146 and 35-147, late filing fees in the state general fund.

G. A license is valid for three years from the date of issuance and shall specify the following:

1. The name of the applicant.
2. The exact address where the applicant will locate the facility.
3. The maximum number and age limitations of children that shall be cared for at any one time.
4. The classification of services that the facility is licensed to provide.

H. The licensee shall notify the department in writing within ten days of any change in the child care facility's director.

I. The license is not transferable from person to person and is valid only for the quarters occupied at the time of issuance.

J. The license shall be conspicuously posted in the child care facility.

K. The licensee shall conspicuously post a schedule of fees charged for services and the established policy for a refund of fees for services not rendered.

L. The licensee shall keep current department inspection reports at the child care facility and shall make them available to parents on request. The licensee shall conspicuously post a notice that identifies the location where these inspection reports are available for review.

M. The department of health services shall notify the department of public safety if the department of health services receives credible evidence that a licensee who possesses a valid fingerprint clearance card either:

1. Is arrested for or charged with an offense listed in § 41-1758.03, subsection B.
2. Falsified information on the form required by subsection E of this section.

### **§ 36-883. Standards of care; rules; classifications**

A. The director of the department of health services shall prescribe reasonable rules regarding the health, safety and well-being of the children to be cared for in a child care facility. These rules shall include standards for the following:

1. Adequate physical facilities for the care of children such as building construction, fire protection, sanitation, sleeping facilities, isolation facilities, toilet facilities, heating, ventilation, indoor and outdoor activity areas, and if provided by the facility, transportation safely to and from the premises.
2. Adequate staffing per number and age groups of children by persons qualified by education or experience to meet their respective responsibilities in the care of children.
3. Activities, toys and equipment to enhance the development of each child.
4. Nutritious and well-balanced food.
5. Encouragement of parental participation.
6. Exclusion of any person from the facility whose presence may be detrimental to the welfare of children.

B. The department shall adopt rules pursuant to title 41, chapter 6 and § 36-115.

C. Any rule that relates to educational activities, physical examination, medical treatment or immunization shall include appropriate exemptions for children whose parents object on the ground that it conflicts with the tenets and practices of a recognized church or religious denomination of which the parent or child is an adherent or member.

D. The department of health services shall conduct a comprehensive review of its rules at least once every two years. Before conducting this review, the department shall consult with agencies and organizations that are knowledgeable about the provision of child care facilities to children including:

1. The department of economic security.
2. The department of education.
3. The state fire marshal.
4. The league of Arizona cities and towns.
5. Citizens groups.

E. The department shall designate appropriate classifications and establish corresponding standards pertaining to the type of care offered. These classifications shall include:

1. Facilities offering infant care.
2. Facilities offering specific educational programs.
3. Facilities offering evening and nighttime care.

F. Rules for the operation of child care facilities shall be stated in a way that clearly states the purpose of each rule.

#### **§ 36-883.01. Statement of services**

Each child care facility shall annually furnish to the department, and make available to parents on request, an explicit and up-to-date written statement of the services it offers.

#### **§ 36-883.02. Child care personnel; fingerprints; exemptions; definition**

A. Except as provided in subsection B of this section, child care personnel, including volunteers, shall submit the form prescribed in subsection C of this section to the employer and shall have valid fingerprint clearance cards issued pursuant to title 41, chapter 12, article 3.1 or shall apply for a fingerprint clearance card within seven working days of employment or beginning volunteer work.

B. Exempt from the fingerprinting requirements of subsection A of this section are parents, including foster parents and guardians, who are not employees of the child care facility and who participate in activities with their children under the supervision of and in the presence of child care personnel.

C. Child care personnel shall certify on forms that are provided by the department and notarized that:

1. They are not awaiting trial on or have never been convicted of or admitted in open court or pursuant to a plea agreement committing any of the offenses listed in section 41-1758.03, subsection B in this state or similar offenses in another state or jurisdiction.
2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in § 8-201.
3. They have not been denied or had revoked a certificate to operate a child care group home or a license to operate a child care facility in this or any other state or that they have not been denied or had revoked a certification to work in a child care facility or child care group home.

D. Employers of child care personnel shall make documented, good faith efforts to contact previous employers of child care personnel to obtain information or recommendations that may be relevant to an individual's fitness for employment in a child care facility.

E. The notarized forms are confidential.

F. A child care facility shall not allow a person to be employed or volunteer in the facility in any capacity if the person has been denied a fingerprint clearance card pursuant to Title 41, Chapter 12, Article 3.1 or has not received an interim approval from the Board of Fingerprinting pursuant to Section 41-619.55, subsection I.

G. The employer shall notify the department of public safety if the employer receives credible evidence that any child care personnel either:

1. Is arrested for or charged with an offense listed in § 41-1758.03, subsection B.
2. Falsified information on the form required by subsection C of this section.

H. For the purposes of this section, "child care personnel" means any employee or volunteer working at a child care facility.

#### **§ 36-883.03. Employer-subsidized child care; immunity from liability**

A. An employer that subsidizes child care on a nondiscriminatory basis to its employees through a child care facility licensed pursuant to this article or through a person or facility exempt from licensure pursuant to this article but screened pursuant to § 41-1964 or 46-321 is not liable for damages as a result of an act or omission by the child care facility, person or exempt facility unless the employer is guilty of gross negligence in recommending the child care facility, person or facility or unless the employer is acting as the owner or has an ownership interest in or is an operator of the child care facility or exempt facility.

B. For purposes of this section, an employer is deemed to be subsidizing an employee's child care costs if the employer pays, either directly or indirectly, at least twenty-five per cent of the cost of the child care service

rendered to the employee by the child care facility, person or exempt facility described in subsection A of this section.

**§ 36-883.04. Standards of care; rules; enforcement**

The director shall prescribe reasonable rules and standards regarding the health, safety and well-being of children cared for in any public school child care program. These rules shall be comparable to the rules and standards prescribed pursuant to § 36-883. The director shall also prescribe rules regarding the enforcement of the standards of care including penalties for noncompliance with these standards. These enforcement and penalty provisions shall be comparable to those existing for private child care facilities.

**§ 36-884. Exemptions**

This article does not apply to the care given to children by or in:

1. The homes of parents or blood relatives.
2. A religious institution conducting a nursery in conjunction with its religious services or conducting parent-supervised occasional drop-in care.
3. A unit of the public school system, including specialized professional services provided by school districts for the sole purpose of meeting mandated requirements to address the physical and mental impairments prescribed in section 15-771. If a public school provides child care other than during the school's regular hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve, that portion of the school that provides child care is subject to standards of care prescribed pursuant to § 36-883.04.
4. A regularly organized private school engaged in an educational program which may be attended in substitution for public school pursuant to § 15-802. If the school provides child care beyond regular public school hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve, that portion of the school providing such care shall be considered a child care facility and is subject to the provisions of this article.
5. Any facility that provides training only in specific subjects, including dancing, drama, music, self-defense or religion and tutoring provided by public schools solely to improve school performance.
6. Any facility that provides only recreational or instructional activities to school age children who may come to and go from the child care facility at their own volition.
7. Any of the Arizona state schools for the deaf and the blind.

**§ 36-885. Inspection of child care facilities**

A. The department or designated local health departments or its agents may at any time visit during hours of operation and inspect a child care facility to determine if it complies with this article and rules adopted under this article.

B. The department shall visit each child care facility as often as necessary to assure continued compliance with this article and department rules. The department shall make at least one unannounced visit annually.

**§ 36-886. Operation without a license; classification.**

A. If it appears that any person is maintaining or operating a child care facility without a license, the department shall notify the facility's operator either by mail, by certified mail with return receipt requested or by delivery in person. The person affected by the notice shall, within ten days from its receipt, cease and desist operation or show proof of having a valid license. The person may, within ten days, request in writing a hearing before the director.

B. On application of the department, a magistrate shall issue a warrant to the department authorizing inspection of a child care facility if there is probable cause to believe that a person is operating the facility without a license.

C. If a person does not comply with this section the department shall notify the county attorney of the county in which the child care facility is being operated of the violation and request that criminal prosecution be commenced against the violator. The department may request the attorney general to apply for injunctive relief.

D. Any person who continues to maintain or operate a child care facility without a license ten days after receipt of notice from the department is guilty of a class 1 misdemeanor.

**§ 36-886.01. Injunctions.**

If the department believes that a child care facility is operating under conditions that present possibilities of serious harm to children, the department shall notify the county attorney or the attorney general who shall immediately seek a restraining order and injunction against the facility.

**§ 36-887. Procedure for inspection of records.**

A. Records maintained by the department for child care facilities are available to the public for review and copying.

B. Personally identifiable information that relates to a child, parent or guardian is confidential. The department shall disclose this information only as follows:

1. Pursuant to a court order.
2. Pursuant to a written consent signed by the parent or guardian.
3. To a law enforcement officer who requires it for official purposes.
4. To an official of a governmental agency who requires it for official purposes.

C. The department shall enter into the child care facility's case file, contiguous to the form containing the reported violation, those documents that verify correction of reported violations.

**§ 36-888. Denial, revocation or suspension of license**

A. The department may deny, suspend or revoke a license for a violation of this article or department rules. At least thirty days before the department denies, revokes or suspends a license it shall mail the applicant or licensee a notice of that person's right to a hearing. The department shall issue this notice by registered mail with return receipt requested. The notice shall state the hearing date and the facts constituting the reasons for the department's action and shall cite the specific statute or rule that the person is not conforming to.

B. If the person does not respond to the written notice the department, at the expiration of the time fixed in the notice, shall take the action prescribed in the notice. If the person within the period fixed in the notice, conforms the application or the operation of the child care facility to the applicable statute or rule, the department may grant the license or withdraw the notice of suspension or revocation.

**§36-889. Licensees; applicants; residency; controlling persons; requirements**

A. Each licensee, other than a corporation, a limited liability company, an association or a partnership, shall be a citizen of the United States who is a resident of this state, or a legal resident alien who is a resident of this state. A corporation, association or limited liability company shall be a domestic entity or a foreign entity that is qualified to do business in this state. A partnership shall have at least one partner who is a citizen of the United States and who is a resident of this state, or who is a legal resident alien and who is a resident of this state.

B. The department shall not issue or renew a license unless a list of each of the applicant's or licensee's controlling persons is on file with the department and no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or other state or has had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.

C. The applicant or licensee shall notify the Department within thirty days after the election of any new officer or director or of any change in the controlling persons and shall provide the department the name and business or residential address of each controlling person and an affirmation by the applicant that no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state or has had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.

D. Each applicant or licensee shall designate an agent who is authorized to receive communications from the Department, including legal service of process, and to file and sign documents for the applicant or licensee. The designated agent shall be all of the following:

1. A controlling person.
2. A citizen of the United States or a legal resident alien.
3. A resident of this state.

**§ 36-890. Decisions**

All decisions rendered by the director, pursuant to the applicable law and regulations, shall be in writing and filed of record in the office of the department. Notice of such decisions shall be given to the affected person or

licensee. If no appeal is taken by any such person or licensee within the time provided by law, the decision of the director shall be final and conclusive.

**§ 36-891. Civil penalty; inspection of centers; training program**

A. The director may impose a civil penalty on a person who violates this article or rules adopted pursuant to this article in an amount of not more than one hundred dollars for each violation. Each day that a violation occurs constitutes a separate violation. The director may issue a notice that includes the proposed amount of the civil penalty assessment. If a person requests a hearing to appeal an assessment, the director shall not take further action to enforce and collect the assessment until the hearing process is complete. The director shall impose a civil penalty only for those days on which the violation has been documented by the department.

B. In determining the civil penalty pursuant to subsection A, the department shall consider the following:

1. Repeated violations of statutes or rules.
2. Patterns of noncompliance.
3. Types of violations.
4. Severity of violations.
5. Potential for and occurrences of actual harm.
6. Threats to health and safety.
7. Number of children affected by the violations.
8. Number of violations.
9. Size of the facility.
10. Length of time during which violations have been occurring.

C. If a civil penalty imposed pursuant to subsection A is not paid, the attorney general or a county attorney shall file an action to collect the civil penalty in a justice court or the superior court in the county in which the violation occurred.

D. Unless a license is revoked or suspended, the director shall place the license of a child care facility subject to a civil penalty pursuant to subsection A on provisional license status for a period of time not to exceed six months in addition to other penalties imposed pursuant to this article.

E. Civil penalties collected pursuant to this section shall be deposited, pursuant to §§35-146 and 35-147, in the state general fund.

F. The department shall develop an instrument that documents compliance and noncompliance of child care facilities according to the criteria prescribed in its rules governing child care facility licensure. Blank copies of the instrument, which shall be in standardized form, shall be made available to the public.

G. The director shall establish a child care facility training program to provide training for child care facilities and users of child care services, technical assistance materials for child care facilities and information to enhance consumer awareness.

**§ 36-891.01. Intermediate sanctions; notification of compliance; hearing**

A. If the director has reasonable cause to believe that a licensee is violating this article or rules adopted pursuant to this article and that the health or safety of the children is endangered, the director may impose, on written notice to the licensee, one or more of the following intermediate sanctions until the licensee is in substantial compliance with this article:

1. Immediate restrictions on new admissions to the child care facility.
2. Termination of specific services that the facility may offer.
3. Reduction of the facility's capacity.

B. A child care facility sanctioned pursuant to this section shall notify the department in writing when it is in substantial compliance. On receipt of notification the department shall conduct an inspection. If the department determines that the facility is in substantial compliance the director shall immediately rescind the sanctions. If the department determines that the facility is not in substantial compliance the sanctions remain in effect. The facility may then notify the department of substantial compliance not sooner than fourteen days after the date of that inspection. If the department determines on the return inspection that the facility is still not in substantial compliance the sanctions remain in effect. Thereafter, a facility may notify the department of substantial compliance not sooner than thirty days after the date of the last inspection. A facility shall make all notifications of substantial compliance by certified mail. The department shall conduct all inspections required pursuant to this subsection within fourteen days after receipt of notification of substantial compliance. If the department does not conduct an inspection within this time period, the sanctions have no further effect.

C. A person who has been ordered by the director to restrict admission, reduce capacity or terminate specific services may request a hearing to review the director's action. The person shall make this request in writing

within ten days after the person receives notice of the director's action. The office of Administrative hearings shall conduct an administrative hearing within seven business days after the notice of appeal has been filed with the office of administrative hearings.

D. A hearing conducted pursuant to this section shall comply with the requirements of title 41, chapter 6, article 10.

**§ 36-892. Violation; classification**

Any person violating the provisions of the applicable law, or regulations, is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this article.

**§ 36-893. Legal action or sale; effect on licensure**

A. The department shall not accept an application for licensure of a currently licensed day care center while any enforcement or court action related to day care center licensure is pending against that center's licensee.

B. The director may continue to pursue any court, administrative or enforcement action against the licensee even though the center is in the process of being sold or transferred to a new owner.

C. The department shall not approve a change in center ownership unless it determines that there has been a transfer of all legal and equitable interests, control and authority in the center so that persons other than the transferring licensee, that licensee's agent or other parties exercising authority or supervision over the center's daily operation or staff are responsible for and have control over the center.

### **ARTICLE 3. PLACEMENT OF CHILDREN BY DEPARTMENT OF ECONOMIC SECURITY**

**§ 36-895. Licensing and monitoring of child care facilities; financial agreements**

A. The department of health services shall license child care facilities and monitor their operation to ensure that the level of care being provided is adequate. The department of economic security shall not duplicate the monitoring functions of the department of health services and shall accept the decisions of the department of health services concerning compliance with licensing standards.

B. The department of economic security may prepare and enter into financial agreements with child care providers as defined in § 46-801.

### **ARTICLE 5. NOTIFICATION OF PESTICIDE APPLICATION**

**§ 36-898. Licensees; pesticide application; notice; definitions**

A. The director, in consultation with licensees, personnel of licensees, parents, guardians, administrators, members of the public, a qualifying party and at least one health professional, shall develop and adopt a policy to provide parents, guardians, children and personnel with at least forty-eight hours' notice before pesticides are applied on licensee property.

B. The policy shall include at least the following:

1. Procedures for providing the notification including:
  - (a) Procedures for written notification to parents, guardians or an individual authorized by a parent or guardian during a regular child care session.
  - (b) Procedures for requiring the licensee to post signs to identify pesticide application areas.
2. Procedures for requiring any contracted pest control applicator to provide detailed and sufficient information to licensees for the purpose of completing the posting materials.

C. The policy shall include exemptions for the following pesticide applications:

1. Nonresidual pesticide applications performed or contracted by public health agencies for adult vector control.
2. Emergency pesticide applications of a pesticide that has a toxicity category of III or IV pursuant to 40 Code of Federal Regulations section 156.62 to control harmful pests that pose an immediate threat to the public health.
3. Disinfectants or swimming pool chemicals.
4. Block, gel or paste-type bait that is a toxicity category III or IV formulation of insecticide pursuant to 40 Code of Federal Regulations section 156.62 and that is either of the following:

- (a) Secured in an enclosed, tamper-resistant bait station and placed in an area that is inaccessible to children.
- (b) Applied to a crack or crevice inaccessible to children.
- 5. Block-type bait that is a toxicity level III or IV formulation of rodenticide pursuant to 40 Code of Federal Regulations section 156.62 and that is secured in an enclosed, tamper-resistant bait station placed in an area inaccessible to children.
- 6. Personal repellants.
- 7. Any pesticide exempt from regulation by the United States environmental protection agency pursuant to the federal insecticide, fungicide and rodenticide act (7 United States Code section 136w).

D. Each licensee shall maintain written records of pesticide application notifications for a period of at least three years after the application. The licensee may delegate to the pest control applicator the duty to fill out and post notices required by department policy. A licensee is not required to maintain records of pesticides that are exempt pursuant to subsection C of this section.

E. For the purposes of this section:

- 1. "Child care" has the same meaning prescribed in section 36-881.
- 2. "Department" means the department of health services.
- 3. "Licensee" means a person who is regulated pursuant to this chapter.
- 4. "Pesticides" includes pesticides regulated under the federal insecticide, fungicide and rodenticide act (P.L. 100-532; 102 Stat. 2654; 7 United States Code section 136) except for nonrestricted use disinfectants, sanitizers or deodorizers regulated by the federal insecticide, fungicide and rodenticide act.
- 5. "Qualifying party" has the same meaning prescribed in section 32-2301.